

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-107-WS

In Re:)	
)	
Application of United Utility Companies,)	Petition for Reconsideration or
Inc. for Adjustment of Rates and Charges)	Rehearing of Order No. 2006-593
And Modifications to Certain Terms and)	
Conditions for the Provision of Water and)	
Sewer Service.)	
_____)	

The South Carolina Office of Regulatory Staff (“ORS”) respectfully submits its Petition for Reconsideration or Rehearing in the above-captioned matter pursuant to 2006 S.C. Acts No. 387, § 38 (amending S.C. Code Ann. § 58-5-330 (1976)), and 26 S.C. Code Regs. 103-836 (1976) and 103-881 (Supp. 2005). ORS petitions the Public Service Commission of South Carolina (“Commission”) to reconsider Order No. 2006-593, issued October 16, 2006. In support of its Petition, ORS would show the following:

1. ORS is a formal party of record in this docket.
2. On August 23, 2006, ORS and United Utility Companies, Inc. (“United” or the “Company”) jointly submitted a Settlement Agreement which proposed net revenues approximately 66% less than United requested in its Application.¹
3. On September 7, 2006, ORS filed a supplement to the Settlement Agreement stating that out of United’s 100 water customers and 1,797 wastewater customers, fifty-six customers testified at the five night hearings held in this docket in Anderson, Greenville, Spartanburg, Cherokee and Union counties. Forty-one of the fifty-

¹ See page 2 of Exhibit D (stipulated testimony of Christina L. Seale) to the Settlement Agreement.

six customers who testified at the night hearings voiced their opposition to the proposed rate increase and did not address any service quality issues in their testimonies.² Thirteen customers testified to billing or concerns related to service quality.³ One customer testified to having a buyer for the Utility system and another customer stated she had some questions and was directed to ORS.⁴

4. Following the submission of the August 23, 2006 Settlement Agreement, the remaining parties of record, North Greenville University (“NGU”) and Greenville Timberline South Carolina, LLC (“Greenville Timberline”) sent correspondence confirming their consent to the rates, terms and conditions of the Settlement Agreement.

5 On October 16, 2006, the Commission issued Order No. 2006-593, Order Rejecting Settlement and Denying Application for an Increase in Rates and Charges (“Order”) on the basis that the Parties failed to provide the Commission with sufficient evidence to determine whether the rates applied for by United are just and reasonable.⁵

6. ORS received Order No. 2006-593 (“Order”) on October 20, 2006.

7. In Order No. 2006-593 the Commission rejected the Settlement Agreement entered into and agreed upon by all the parties of record in this matter.

8. In accordance with 2006 S.C. Acts No. 387 § 38 (amending S.C. Code Ann. § 58-5-330 (1976)), and the Commission’s Rules of Practice and Procedure, 26 S.C. Code Regs. 103-836 (1976) and 103-881 (Supp. 2005), ORS respectfully petitions the

² See Exhibit A - Supplement to Settlement Agreement. See also, T. Vol. I-IV.

³ See Exhibit A. See also, T. Vol. I-IV This total does not include the testimony of Mr. Greer, Representative Anthony, or Ms. Marks as set forth in T. Vol. XI. Notably, County Councilman Greer requested the Commission to “seriously consider the Agreement that’s been reached between the parties.” T. Vol. XI pp. 8-9.

⁴ See Exhibit A. T. Vol. I p. 53-55; T. Vol. IV p. 54-55.

⁵ Order at p. 2.

Commission for reconsideration of the following findings of facts, conclusions of law and decisions made by the Commission.

9. Each finding, inference, conclusion or decision cited in this Petition constitutes error, arbitrary and capricious action, or is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or is an abuse of discretion all of which results in prejudice to the substantial rights of ORS. In addition, Order No. 2006-593 contains findings, inferences, conclusions or decisions that are unsupported by substantial evidence, that are made upon unlawful procedure, or that violate constitutional or statutory provisions.

I. The Commission Exceeded Its Authority

10. The Commission exceeded its authority in that:

(a) The Commission actively solicited evidence.⁶ The Commission's authority to institute an inquiry on its own motion was expressly repealed by 2006 S.C. Acts 318.⁷ When a statute has been changed, by adding or deleting a provision, term or word, it must be presumed that it was done so with legislative intent.⁸

⁶ T. Vol. I p. 38 lines 12-25, p. 39 lines 1-4, p. 40 lines 1-12, p. 42 lines 1-19, p. 48 lines 21-24, p. 49 lines 1-4,; Vol. II p. 20 lines 20-25, p. 21 lines 1-4; Vol. III p. 18 lines 13-20, p. 19 lines 1-17, p. 23 lines 7-8, p. 24, lines 11-25, p. 25 lines 1-7, p. 35 lines 11-23, p. 36 lines 1-20, p. 37 lines 12-20, *See* S.C. Code Ann. § 58-3-60(A) (Supp. 2005). Additionally, the Commission requested a witness to be available at the hearing to answer questions. T. Vol. III pp. 35-38. *Cf Palmetto Alliance Inc. v. South Carolina Public Service Commission* 282 S.C. 430, 319 S.E2d 695 (1984).

⁷ See 2006 S.C. Acts No. 318, § 233 which expressly repeals §58-5-280.

⁸ *State v. Leopard*, 349 S.C. 467, 473, 563 S.E.2d 342 (Ct. App. 2002). "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' The maxim should be used to accomplish legislative intent, not defeat it."

(b) The Commission exceeded its authority by acting as a party when it solicited evidence.⁹ The Commission is precluded from participating in a rate case as a party of record. S.C. Code Ann. § 58-3-60(A) (Supp. 2005). (“The commission staff shall not appear as a party in commission proceedings and shall not offer testimony on issues before the commission.”)

(c) The Commission is subject to the Code of Judicial Conduct pursuant to S.C. Code Ann. § 58-3-30 (Supp. 2005). The Commission violated Rule 501 of the South Carolina Appellate Court Rules (“SCACR”), Canon 3 in that the Commission was attempting to independently investigate facts by holding hearings seeking “public opinion” rather than lawfully admitted evidence and soliciting evidence. By its actions, the Commission exceeded its authority by participating in this matter as a party of record.¹⁰

(d) The Executive Director of ORS employed Dr. Woolridge to provide professional expertise to assist ORS in evaluating United’s application, to assist ORS in preparation of its case, and to provide his services as an expert witness in this matter if necessary. As set forth by statute and pursuant to agreement with United, the compensation and expenses of Dr. Woolridge are to be paid by United. The Commission exceeded its authority when it denied rate case expenses associated with the employment

⁹ T. Vol. I p. 38 lines 12-25, p. 39 lines 1-4, p. 40 lines 1-12, p. 42 lines 1-19, p. 48 lines 21-24, p. 49 lines 1-4.; Vol. II p. 20 lines 20-25, p. 21 lines 1-4; Vol. III p. 18 lines 13-20, p. 19 lines 1-17, p. 23 lines 7-8, p. 24, lines 11-25, p. 25 lines 1-7, p. 35 lines 11-23, p. 36 lines 1-20, p. 37 lines 12-20, *See* S.C. Code Ann. § 58-3-60(A) (Supp. 2005). Additionally, the Commission requested a witness to be available at the hearing to answer questions. T. Vol. III pp. 35-38. *Cf Palmetto Alliance Inc. v. South Carolina Public Service Commission* 282 S.C. 430, 319 S.E2d 695 (1984).

¹⁰ T. Vol. I p. 38 lines 12-25, p. 39 lines 1-4, p. 40 lines 1-12, p. 42 lines 1-19, p. 48 lines 21-24, p. 49 lines 1-4.; Vol. II p. 20 lines 20-25, p. 21 lines 1-4; Vol. III p. 18 lines 13-20, p. 19 lines 1-17, p. 23 lines 7-8, p. 24, lines 11-25, p. 25 lines 1-7, p. 35 lines 11-23, p. 36 lines 1-20, p. 37 lines 12-20, *See* S.C. Code Ann. § 58-3-60(A) (Supp. 2005). Additionally, the Commission requested a witness to be available at the hearing to answer questions. T. Vol. III pp. 35-38. *Cf Palmetto Alliance Inc. v. South Carolina Public Service Commission* 282 S.C. 430, 319 S.E2d 695 (1984).

of expert witnesses and professional expertise. S.C. Code Ann. § 58-4-100 (Supp. 2005), provides that “[t]he compensation and expenses must be treated by the commission, for ratemaking purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the commission.” (Emphasis added).

II. The Parties Were Not Afforded a Fair Hearing

11. The Commission failed to afford the Parties a fair hearing in that the Commission solicited evidence, failed to properly deliberate, shifted the burden of proof, raised issues not raised by parties of record, and assumed the role of an advocate rather than an impartial panel.

(a) The arbitrary and capricious actions by the Commission denied the Parties a fair hearing in this matter. The Commission’s attempt to act as a party in this matter prejudiced the proceedings, denied the Parties due process and precluded an impartial hearing.¹¹

(b) The Commission participated in this matter as an advocate shedding its role as a fair and impartial panel.¹² The Commission also violated Canon 3 of the Code of Judicial Conduct in that the Commission attempted to independently investigate facts in a case and solicited evidence to be presented.¹³ It is inappropriate for

¹¹ Cf. S.C. Code Ann. § 1-23-310(2), (3) and (5) (2005) (The Administrative Procedures Act expressly states that a contested case containing parties is to be determined by an “agency.” “Agency” is defined to include a commission.” A “party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.” 2004 S.C. Code Acts No. 175 expressly prohibits the Commission from acting as a party.)

¹² S.C. Code Ann. §§ 58-3-30(B) and 58-3-60(A) (Supp. 2005).

¹³ S.C. Code Ann. §58-3-30(B).

the Commission to actively solicit potential evidence, in the form of testimony or otherwise, from a witness.¹⁴

(c) The Commission failed to properly deliberate by rendering a decision approximately four hours after the close of the settlement hearing and the Commission's actions illustrate it acted with bias against the Parties. The Commission issued a notice on September 7th at approximately 8:35 a.m. regarding a 3:00 pm special Commission meeting to be held on September 8th wherein the Commission ultimately denied the Settlement Agreement.¹⁵ The Commission issued its directive denying the Settlement Agreement on September 8, 2006, within just a few hours after the close of the settlement hearing on September 8, 2006 at 10:40 a.m.

(d) The Commission failed to provide a fair hearing conducted under dignified and orderly procedures as evidenced by the applause and laughter permitted during the hearing.¹⁶

III. The Commission's Rejection of the Settlement Agreement Is Erroneous

12. The Commission's rejection of the Settlement Agreement is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

(a) The Commission voted to reject the Settlement Agreement because of "unresolved questions of fact remaining in the record and a lack of evidence presented by the Parties."¹⁷ In its Order the Commission states that on September 6, 2006, it issued

¹⁴ See S.C. R. Evid. 614 stating that in "*extraordinary*" circumstances a court may call witnesses and "*in the interests of justice only*" the court may interrogate witnesses. (Emphasis added.)

¹⁵ Commission action must be noticed at least twenty-four hours in advance. [See S.C. Code Ann. § 30-4-80(a).]

¹⁶ S.C. Code Ann. § 58-3-225 (Supp. 2005). For example, at the night hearings the court reporter noted [Applause] or [Laughter] numerous times during the night hearings. T. Vol. I, p. 36, p. 41, T. Vol. IV, pp. 21- 23, 27, 32-33, 35-38, 41-42, 46-54, 56, 59, 60; T. Vol. V, pp. 9, 33, 37.

¹⁷ Order at p. 5.

a Directive requesting the following information from the Parties: (1) information on sewer backups; (2) information regarding the proposed flat rate fee structure for sewerage services; (3) information regarding billing and collections practices; and (4) information regarding DHEC violations.¹⁸ The Commission rejected the Settlement Agreement ostensibly for failure of United and ORS to respond to the questions issued in the Commission's Directive of September 6, 2006. The Commission did not issue these questions until the afternoon of September 6, 2006, and this matter was scheduled for hearing on the morning of September 8, 2006. Further, the Commission was aware or should have been aware that ORS counsel was committed to be in a Commission hearing on September 7, 2006 which did not conclude until 7:30 p.m. on September 7, 2006. Additionally, as a result of all parties signing the Settlement Agreement, no party raised any of the issues raised by the Commission's September 6, 2006 Directive. It was unreasonable for the Commission to expect ORS to respond to the Directive on September 8, 2006.

(b) The Commission cites *Hilton Head Inc. Plantation Utilities v. Public Service Commission of South Carolina* as support for its position that the Commission can deny an application for a rate increase based upon issues raised by a public witness and that the Commission has the "right of independent inquiry."¹⁹ The *Hilton Head* decision predates 2004 S.C. Acts 175 ("Act 175") and 2006 S.C. Acts 318 ("Act 318") and was issued at a time when the Commission was a party to the proceeding and was not subject to the Code of Judicial Conduct.²⁰ Act 175 subjects the Commission

¹⁸ Order at pp. 18-22.

¹⁹ Order at p. 17.

²⁰ See S.C. Code Ann. § 58-30-3(B) and also S.C. Code Ann. § 58-3-200 (Supp. 2005) which provides that the Commission cannot conduct inspections, audits and examinations.

to the Judicial Code of Conduct, expressly provides that the Commission is no longer a party to the case, and expressly states that the Commission can no longer conduct inspections, audits and examinations.²¹ Further, the Commission’s authority to institute an inquiry on its own motion, which it had at the time of the *Hilton Head* decision, has been stripped from the Commission by the General Assembly with the repeal of S.C. Code Ann. Section 58-5-280.²² Act 175 established ORS as the agency responsible for investigating and auditing regulated utilities in South Carolina. ORS is also responsible for representing the public interest before the Commission.²³ The Commission now has the responsibility of wearing the robe of an impartial judge, and to reach a decision in this matter, the Commission must weigh only that evidence that is admitted into the record of the case.²⁴

(c) **Information on sewer backups.** Although the Commission points to its request for information regarding sewer backups based upon “questions raised at the Commission’s public hearings” as the reason for denying the Settlement Agreement,²⁵ the Commission’s Order provides no specific information or detail to support its finding.²⁶ The Commission’s Order is clearly erroneous in light of the reliable, probative and substantial evidence on the whole record.

(d) **Information regarding the proposed flat rate fee structure for sewerage services.** The Commission rejected the Settlement Agreement in part for

²¹ S.C. Code Ann. §§ 58-3-60(A), 58-3-30(B), and 58-3-200 (Supp. 2005).

²² See 2006 S.C. Acts No. 318, § 233 which expressly repeals §58-5-280.

²³ S.C. Code Ann. § 58-4-10 (Supp. 2005).

²⁴ Canon 3 of the Code of Judicial Conduct, Commentary: A judge must not independently investigate facts in a case and must consider only the evidence presented.

²⁵ Order at pp. 18-19

²⁶ Porter v. South Carolina Public Service Commission of South Carolina, 333 S.C. 12, 507 S.E.2nd 328 at 332-333 (1998). Indeed, although not cited by the Commission in its Order, the record reflects that some consumers testified that they had no sewer backup issues. (T. Vol. IV p. 23 lines 1-5.). See also, S.C. Code Ann. § 58-3-250.

failure by ORS to explain why the Commission should find that a flat rate sewage billing is just and reasonable and why it believes that flat rate billing is superior to billing based upon individual usage. First, ORS would submit that the Commission could use the same reasoning it applied when it approved flat rate billing for Tega Cay Water Service, Inc. (“Tega Cay”).²⁷ Second, the Commission did not raise these questions until September 6, 2006 and the hearing in this matter was scheduled for the morning of September 8, 2006. Third, as a result of the Settlement Agreement, no party asserted this issue on the record before the Commission. The issue regarding the flat fee structure for sewerage services was raised only by NGU in its pre-filed testimony which was not submitted into the record. Further, even if NGU’s testimony had been submitted into the record, NGU’s consent to the settlement agreement resolved any issue NGU may have had with the flat rate billing structure.²⁸ Fourth, the Commission has approved flat rate sewer billing for this Company and others for years.²⁹ The Commission has previously approved flat rate billing in previous United rate cases and most recently in Order No. 2005-328.³⁰ Fifth, it was unreasonable for the Commission to expect such an analysis to be completed in the few business hours between receipt of the questions to the Commission decision in this matter. Sixth, the Commission provides no support for its contention that South Carolina determines whether a flat rate billing structure is just and reasonable on a “case by case” basis. Seventh, given that no party contested the flat rate billing structure, the Commission’s Directive must be viewed as the Commission raising the issue on its own

²⁷ See Order No. 2006-582, Docket No. 2006-97-WS.

²⁸ Although the Commission expressed concern that some agreement between NGU and United was reached outside of the settlement agreement, NGU clearly stated that it had accepted the entire settlement package and that NGU was being charged the same rates as all other commercial customers. T. Settlement Hearing Vol. pp. 35-36.

²⁹ See Order No. 1990-651, Docket No. 89-602-WS; Order No. 2002-214 and 2004-254, Docket No. 2000-210-WS.

³⁰ The Commission approved flat rate billing for United affiliate Tega Cay in Order No. 2006-582.

motion, and as explained *supra*, Act 318 expressly strikes the Commission's authority to initiate an inquiry.³¹

(e) Additionally, in Hamm v. South Carolina Public Service Comm'n, 315 S.C. 119, 432 S.E.2d 454 (1993) the Supreme Court held that a utility rate which has been previously established in a rate proceeding is presumptively correct. Further, the Supreme Court has stated that "the burden is upon the party challenging uniformity and seeking allocation to show that the case so warrants." August Kohn & Co. v. Public Service Comm'n, 281 S.C. 28, 31, 313 S.E.2d 630, 632 (1984). In this matter, the Settlement Agreement did not propose to depart from the previously approved rate design which utilizes flat rates for sewer service. This flat rate design for sewer service was previously established and utilized by the Commission for United and pursuant to Hamm was a just and reasonable rate design as a matter of law. Further, under the logic and holding of the August Kohn case, the party seeking to alter that previously established rate design would bear the burden of establishing that the rate design was not just and reasonable.

(f) The Commission's rejection of the Settlement Agreement for failure of the parties to provide an explanation as to why the flat-rate sewerage billing is just and reasonable and why it is superior to individual usage is in error because the Settlement Agreement continues the rate design previously approved and found appropriate by the Commission in previous orders concerning United and numerous other wastewater companies. Further, by rejecting the Settlement Agreement based on such

³¹ See 2006 S.C. Acts No. 318 § 233, which expressly repeals §58-5-280.

reasoning and failing to follow its own previous orders establishing and finding such rate design just and reasonable, the Commission's order and determination are arbitrary.³²

(g) **Information regarding billing and collections practices.** The Commission's Order omits that ORS's Business Office Compliance Reviews found that United's "invoice adjustments, deposit refunds, late payment penalties and reconnection notices are automated, accurate, and timely."³³ The Commission states that the practice of placing orange tags on customer mailboxes to indicate scheduled disconnection of service due to nonpayment is "disturbing" and implies that this may be an unconscionable debt collection practice.³⁴ To the extent any company, including a utility, is violating fair debt collection practices this Commission does not have the authority to enforce those regulations.³⁵

(h) **Information regarding DHEC violations.** The Commission bases its rejection of the Settlement Agreement on unanswered questions with regard to Commission reporting requirements of DHEC violations and purported evidence that two systems were found to be unsatisfactory by DHEC.³⁶ As part of settlement negotiations, not all issues are crystallized in the settlement agreement. No party raised this issue and all parties consented to the settlement agreement. Further, settlement negotiations are

³² See, 330 Concord Street Neighborhood Ass'n v. Campsen, 309 S.C. 514, 424 S.E.2d 538 (1992) ("An administrative agency is generally not bound by the principle of *stare decisis* but it cannot act arbitrarily in failing to follow established precedent.").

³³ Stipulated Direct Testimony of Dawn Hipp at page 5.

³⁴ Order at p. 21.

³⁵ Further, on September 7, 2006, ORS filed a Supplement to the Settlement Agreement in which ORS informed the Commission that each customer witness who testified at a night hearing to having a billing, service or quality issue which had not been resolved would be contacted by ORS's Consumer Services Department. To the extent ORS determines a violation of the Commission's rules and regulations exists, ORS would file, pursuant to S.C. Code Ann. § 58-4-50 and § 58-4-90 (Supp. 2005), a petition for an enforcement proceeding or other action to address the alleged violation.

³⁶ Order at p. 22.

afforded confidential treatment.³⁷ Parties often settle a matter without specifying each and every issue for a variety of reasons including, but not limited to, the inability to support an allegation with evidence or the determination that a purported violation was not contrary to current laws, rules or regulations. If the Commission requires all parties to fully explain each and every issue in a settlement agreement, parties will be reluctant to enter into settlement negotiations for fear that the content of the confidential negotiations will be forced to become public.

(i) In rejecting the settlement agreement, the Commission fails to account for the evidence submitted into the record by ORS through Ms. Hipp's stipulated testimony wherein ORS found that United systems were currently operating adequately and in compliance with DHEC rules and regulations.³⁸ After conducting Business Office Compliance Reviews and site inspections, ORS found that service is adequate and United is in compliance with Commission and DHEC rules and regulations.³⁹

(j) The Commission states that issues initially raised in Ms. Hipp's direct testimony were not subsequently explained or elaborated upon and thus the Commission was without sufficient information to determine whether the proposed rates are just and reasonable based upon the whole record.⁴⁰ The Commission, however, does not address or consider the portion of Ms. Hipp's direct testimony wherein she states that United is *currently* operating in compliance with all DHEC rules and regulations.⁴¹ If

³⁷ S.C. R. Evid. 408.

³⁸ Stipulated Direct Testimony of Dawn Hipp at pp. 5-7.

³⁹ An "unsatisfactory" rating by DHEC does not rise to the level of a DHEC violation. A unsatisfactory rating precedes any enforcement action for a DHEC violation.

⁴⁰ Order at p. 23

⁴¹ Stipulated Direct Testimony of Dawn Hipp at p. 7. The Commission is not considering the whole record but only a very limited portion of the record. If the Commission considered the whole record, the Commission would have to conclude that the settlement agreement was appropriate and should have been approved.

Ms. Hipp had failed to provide historical information as set forth in her direct testimony that at some point in the past United had received an unsatisfactory rating at two systems, the Commission may have deemed that ORS was not setting forth all the information it had in its possession. Yet, clearly, a water/wastewater utility may receive an unsatisfactory rating, equivalent to a warning, and yet not be the subject of an enforcement action by DHEC due to the utility's correction of the problem that gave rise to the unsatisfactory rating. By analogy, United may have failed one inspection or test, and yet, passed the final exam.

(k) The Commission was supplied with sufficient information regarding quality of service. ORS received a total of two customer complaints during the test year out of a total of roughly 1900 customers.⁴² As of June 30, 2006, United provided water service to 93 single family equivalents and wastewater services to 1,874 single family equivalents.⁴³ At the night hearings, thirteen customers complained about billing, or service quality issues.⁴⁴ In Dawn Hipp's pre-filed direct testimony, she stated:

UUCI **currently** provides adequate water supply services to its residential customers using deep-drilled wells. Safe drinking water standards are being met according to recent DHEC sanitary survey reports and required certified operator logs were in compliance at all ORS audited facilities. General housekeeping items including treatment chemical labeling, facility fencing, access roads and signage are satisfactory.⁴⁵ [Emphasis added].

⁴² Stipulated Direct Testimony of Dawn Hipp at Exhibit DMH-3.

⁴³ *Id.*

⁴⁴ Supplement to Settlement Agreement filed by ORS on September 7, 2006. The total does not include complaints based solely rates. Further, ORS sent a letter to each customer who complained of billing or service quality issues at the night hearings and as of the date of the filing of this Petition no United customer has responded to the ORS letter.

⁴⁵ Stipulated Direct Testimony of Dawn Hipp at p. 6, lines 15-20.

United provides wastewater treatment under NPDES permits...During the ORS inspection, all wastewater collection and treatment systems were operating adequately and in accordance with DHEC rules and regulations.⁴⁶

(l) ORS respectfully submits that Ms. Hipp's testimony is not in conflict but merely provides all available information in ORS's possession and that Ms. Hipp's testimony presents her conclusions that United passed the ORS on-site inspections and is currently in compliance with DHEC regulations.⁴⁷ Further, ORS has the responsibility of bringing an enforcement action against a utility that fails to comply with the Commission rules and regulations.⁴⁸ In summary, the Commission failed to address the evidence presented and opted instead to focus only on what Commission believes should have been presented by the parties.

IV. The Order is Inconsistent With Commission Rulings

13. The Order is inconsistent with Commission rulings.

(a) The Commission pursuant to Order No. 2006-338 in this docket, approved the fees and expenses of an expert witness and professional expertise. The Commission found as follows:

IT IS HEREBY ORDERED that UUCI shall provide funding for the cost of an expert witness employed by ORS in connection with the above-captioned proceeding in an amount not to exceed **\$7,500.00** for fees and in an amount not to exceed **\$830.00** for travel expenses related to this matter.⁴⁹

The rate case expenses associated with Dr. Woolridge were included in Settlement Agreement Exhibit D, Stipulated Direct Testimony of Ms. Seale.⁵⁰ By denying the

⁴⁶ Stipulated Direct Testimony of Dawn Hipp at p. 7, lines 2 and 4 – 6.

⁴⁷ *Id.*

⁴⁸ S.C. Code Ann. § 58-4-50 and § 58-4-90 (Supp. 2005).

⁴⁹ Order No. 2006-338, Order Exhibit 1, p. 3.

Settlement Agreement and the Company's Application, this Commission's Order is inconsistent with Order No. 2006-338.⁵¹

(b) The Commission pursuant to Order No. 2006-284 in this docket, approved a Management Review Audit. Only after receiving the Commission's Order No. 2006-284 did ORS issue a Request for Proposal ("RFP"). Both United and ORS relied to their detriment upon Commission Order No. 2006-284 when issuing the RFP. Specifically, the Commission ordered that "the cost of the audit should be recoverable by each company in a proportionate share to each company's customer base and amortized in the same manner as rate case expenses for each of the three pending rate cases."⁵² The rate case expense associated with the audit was set forth in Settlement Agreement Exhibit D, Stipulated Direct Testimony of Ms. Seale.⁵³ By denying the Settlement Agreement and the Company's Application, Order No. 2006-593 is inconsistent with Order 2006-284.⁵⁴

(c) Order No. 2006-593 is inconsistent with Order No. 2006-582.⁵⁵ The Commission approved the same return on equity for Tega Cay, as that contained in the Settlement Agreement for United. The same testimony and evidence supporting a 9.4 % return on equity submitted in the Tega Cay case was submitted in this matter. The Commission's decision to approve a 9.4 % return on equity for Tega Cay but reject the same 9.4 % return on equity for United is arbitrary and capricious. The Commission

⁵⁰ Exhibit D of the Settlement Agreement (Stipulated Testimony of Ms. Seale at Exhibit CLS -4, note (D) (7)). The rate case expenses are amortized over a three year period.

⁵¹ See Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992).

⁵² Order No. 2006-284 at p. 5.

⁵³ Exhibit D of the Settlement Agreement (Stipulated Testimony of Ms. Seale at Exhibit CLS-4, note (D) (7)). The rate case expenses are amortized over a three year period.

⁵⁴ See Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992).

⁵⁵ Attached as Exhibit B to this Petition is Order 2006-582.

approved the sewer rates in Tega Cay because the rates are much lower than those originally applied for.⁵⁶ The residential sewer rates approved in Order 2006-582 are 14.16 % lower than the rates proposed in Tega Cay's application; and yet, the proposed residential sewer rates for United in the settlement agreement are 29.15 % lower than those proposed in United's application.⁵⁷ Further, in Order No. 2006-582 the Commission approved a flat rated sewer structure as producing fair and reasonable rates.

V. Commission Erred By Applying A Public Interest Standard

14. The Commission erred when it applied a "public interest standard" to the Settlement Agreement. In rejecting the Settlement Agreement submitted by the parties, the Commission's findings, conclusions, and decision are: (1) in violation of statutory provisions; (2) are made in excess of the statutory authority of the agency; (3) are affected by other error of law; and (4) are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

(a) The Commission found that it "cannot make the necessary separate and independent determination as to whether or not the *public interest would be served* by acceptance of the Settlement Agreement..."⁵⁸ (Emphasis added.) In reaching this Finding of Fact and Conclusion of Law, the Commission has exceeded its statutory authority and has erred as a matter of law.

⁵⁶ Order 2006-582 at p. 11.

⁵⁷ In terms of dollars, the Tega Cay approved settlement rates for residential sewer are \$4.24 less than requested in the application. By comparison, the proposed settlement rates for United residential sewer service are \$14.06 lower than requested in the application.

⁵⁸ Order at p. 28, Finding of Fact and Conclusion of Law #12.

(b) The South Carolina General Assembly delegated to ORS the exclusive duty and responsibility to “represent the public interest in commission proceedings.”⁵⁹ In delegating to ORS the exclusive responsibility to “represent the public interest of South Carolina before the commission,” the legislature has defined the term “public interest” to mean “a balancing of the ... (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer; (2) economic development and job attraction and retention in South Carolina; and (3) preservation of the financial integrity of the state’s public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.”⁶⁰ This definition appears only in Article 4 of Title 58 and applies only to ORS.

(c) By contrast, the Commission has no statutory authority to ascertain, represent, or determine the public interest in water or wastewater rate proceedings.⁶¹ The Commission’s enabling legislation is devoid of any reference or directive instructing or empowering the Commission to ascertain, represent, or determine the public interest in water or wastewater cases. There is no statute in either Chapter 3 or Chapter 5 of Title 58 of the Code of Laws of South Carolina which authorizes the Commission to act in or make a determination regarding “the public interest.”⁶² Yet the

⁵⁹ S.C. Code Ann. § 58-4-50(4) (Supp. 2005).

⁶⁰ S.C. Code Ann. § 58-4-10(B) (Supp. 2005).

⁶¹ Any court case holding that the Commission has public interest authority predates Act 175 wherein the General Assembly specifically delegated the public interest authority to ORS.

⁶² Chapter 9 of Title 58, however, does provide the Commission with the authority to make a determination regarding an application for a certificate of public convenience and necessity for a telephone utility. S.C. Code Ann. § 58-9-280(B)(5) (Supp. 2005). “The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’ The maxim should be used to accomplish legislative intent, not defeat it.” State v. Leopard, 349 S.C. 467, 473, 563 S.E.2d 342 (Ct. App. 2002). Thus, when the

Commission found and concluded in Order No. 2006-593 that it “cannot make the necessary separate and independent determination as to whether or not the public interest would be served by acceptance of the Settlement Agreement...”⁶³ Such a finding of fact and conclusion of law is in excess of the Commission’s statutory authority and is an error of law. There is no statute which empowers the Commission to make a “separate and independent determination” as to whether approval of the Settlement Agreement would serve or be consistent with the public interest. The Commission possesses only the authority given it by the legislature.⁶⁴

(d) The Commission’s finding and conclusion that it “cannot make the necessary separate and independent determination as to whether or not the public interest would be served by acceptance of the Settlement Agreement...” is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. No party of record to this case objected to the Settlement Agreement or asserted that the Settlement Agreement does not conform with the public interest as defined by statute. To the contrary, the parties of record, one of whom is the agency charged by statute with representing the public interest in matters before the Commission, concluded that the Settlement Agreement is consistent with the public interest. The Parties then proceeded to put forth evidence in support of the Settlement Agreement. The Settlement Agreement itself and the evidence of record presented by the parties in support of the Settlement Agreement demonstrate that the Settlement Agreement is in the public interest. For the

General Assembly intended the Commission to have the authority to make a public interest determination, it expressly provided for this authority by statute.

⁶³ Order at p. 28, Finding of Fact and Conclusion of Law #12.

⁶⁴ S.C. Cable Television Ass’n v. Public Service Comm’n of South Carolina, 313 S.C. 48, 52,437 S.E.2d 38, 40 (1993).

Commission to ignore the evidence of record as presented by the parties of record is error.

VI. The Commission Erred By Not Approving the Settlement Agreement

15. The Commission erred in not approving the Settlement Agreement. As set forth in this Petition, the Commission's Order is in error because it is in violation of constitutional and statutory provisions; is in excess of statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; and is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.⁶⁵

(a) Not only did the Commission ignore the evidence of record, but the Commission impermissibly and without statutory authority interjected itself into the proceedings as an advocate.⁶⁶ The Commission is required to perform its duties in an impartial manner.⁶⁷ The Commissioners and the Commission's employees are bound by the Code of Judicial Conduct as contained in Rule 501 of the South Carolina Appellate Court Rules.⁶⁸ The Commission may not participate in a proceeding as a party.⁶⁹ Yet

⁶⁵ S.C. Code Ann. § 1-23-380(5) as amended by 2006 S.C. Acts 387.

⁶⁶ T. Vol. I p. 38 lines 12-25, p. 39 lines 1-4, p. 40 lines 1-12, p. 42 lines 1-19, p. 48 lines 21-24, p. 49 lines 1-4; Vol. II p. 20 lines 20-25, p. 21 lines 1-4; Vol. III p. 18 lines 13-20, p. 19 lines 1-17, p. 23 lines 7-8, p. 24, lines 11-25, p. 25 lines 1-7, p. 35 lines 11-23, p. 36 lines 1-20, p. 37 lines 12-20, *See* S.C. Code Ann. § 58-3-60(A) (Supp. 2005).

⁶⁷ *See* S.C. Code Ann. § 58-3-30(B) (Supp. 2005) and Rule 501, SCACR, Canon 3.

⁶⁸ *Id.*

⁶⁹ *See* S.C. Code Ann. § 58-3-60(A) (Supp. 2005). ("The commission staff shall not appear as a party in commission proceedings and shall not offer testimony on issues before the commission.")

contrary to these statutory restrictions, the Commission undertook to raise issues and seek responses from the parties.⁷⁰

(b) In the Order, the Commission cites *Kiawah Property Owners Group v. Public Service Comm’n of S.C.*, 359 S.C. 105, 597 S.E.2d 145 (2004) for the proposition that “the Commission may exercise its independent judgment in setting rates and is not limited to adopting or rejecting the testimony of witnesses as long as the Commission’s Order is based on the evidence of record.”⁷¹ *Kiawah Island* does not support the Commission’s conclusion that the Commission may exercise its independent judgment. First, *Kiawah Island* involves a review of an operating margin not a return on equity or settlement agreement as in the instant case.⁷² The operating margin in *Kiawah Island* was derived from Commission Staff and Company testimony contained in the record.⁷³ Here, the issue of an appropriate return on equity was settled by the parties and thereafter memorialized in the settlement agreement. Second, *Kiawah Island* predates Act 175 which prohibits Commission Staff from appearing before the Commission. In addition to predating Act 175, *Kiawah Island* deals with the Commission deriving an operating margin from *testimony* presented by a *party*.⁷⁴ Contrary to *Kiawah Island*, the Commission here *sua sponte* independently sought additional evidence not in the record.

⁷⁰See Order at p. 4, “Neither witness provided testimony concerning the unresolved issues of fact previously raised by the Commission related to this proceeding. Both witnesses testified specifically that they had no knowledge or opinion as to several of these issues.”; p. 13, “In its Directive issued on September 6, 2006, the Commission alerted the Parties to its concerns about the rates proposed in the Company’s application and the quality of its service and that the Commission wished to consider these issues in the course of the case.”; p. 14 “[T]he Commission invited the Parties to provide additional evidence addressing certain concerns raised in the course of the several public hearings conducted in this case....”; p. 22, “The Commission requested additional evidence....”.

⁷¹Order at p. 23.

⁷²*Kiawah Island* at 108.

⁷³*Id.* at 110. “We hold that the PSC’s decision to set the Utility’s operating margin at 6.5%-a number much less than what the PSC staff recommended-was supported in the record by the testimony of Clarkson and Ellison.”

⁷⁴*Id.*

ORS disagrees that *Kiawah Island* supports the Commission's assertion that it may exercise independent judgment. As such, the Commission's analysis suffers from an error of law.

(c) The Commission erroneously applies *Patton v. S.C. Public Service Comm'n*, 280 S.C. 288, 312 S.E.2d 257 (1984). The Commission states, "In *Patton*, the South Carolina Supreme Court affirmed the premise that quality of service is a '[necessary]' factor among other considerations in determining a *just and reasonable operating margin* when approving a rate increase."⁷⁵ (Emphasis added.) The Commission also states that *Patton* concludes that "substantial evidence in the record existed to support the Commission's concern regarding the company's quality of service."⁷⁶ To the contrary, *Patton* holds that quality of service rendered is a factor to be considered in fixing the 'just and reasonable' rates -- not an operating margin as the Commission holds.⁷⁷ In *Patton*, the Commission approved a rate increase for all customers with the exception that customers in a specific subdivision would not be charged the increase until the appellant completed upgrades to that subdivision to meet DHEC standards.⁷⁸ The decision in that case was supported by DHEC testimony.⁷⁹ In the instant case, there was no testimony from DHEC challenging the quality of service, no current DHEC violation was cited in the Order, and the Company was not cited as being noncompliant with any DHEC standard. Unlike *Patton*, in this case the Commission has not found that United must make upgrades. As such, the Commission's analysis suffers from an error of law

⁷⁵ Order at p. 9.

⁷⁶ *Id.*

⁷⁷ *Patton* at 293.

⁷⁸ *Id.*

⁷⁹ *Id.* at 292-293.

and Order No. 2006-593 is not supported by substantial evidence contained in the record of this case.

(d) The Commission cites a federal power case as support for its position that it has a separate and independent obligation to review a settlement agreement and its ancillary issues.⁸⁰ The Commission's reliance on this case is misplaced in that Act 175 clearly places the Commission in the position of the judge and ORS in the position of the prosecutor enforcing the Commission's regulations and bringing actions before the Commission on behalf of the public interest. The Commission cannot provide "active and affirmative" protection while subject to the Judicial Code of Conduct.

VI. The Order Fails to Make Findings of Fact and/or Conclusions of Law

16. Order No. 2006-593 is not supported by substantial evidence and fails to comport with S.C. Code Ann. §1-23-350 (Supp. 2005). The Order fails to comply with S.C. Code Ann. §58-3-250 (Supp. 2005) in that the Order does not provide sufficient detail regarding finding of facts and conclusions of law.⁸¹

VII. Other Matters in Error

17. Order No. 2006-593 contains misstatements, errors, and/or factual inaccuracies.

⁸⁰ Order No. 2006-593 at p. 24 citing Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F.2d 608, 620 (2d. Cir. 1965).

⁸¹ *See also, Porter v. South Carolina Public Service Commission of South Carolina*, 333 S.C. 12, 507 S.E.2d 328 at 332-333 (1998).

(a) The Order states on page 13 that the “parties were either unable or unwilling to address” the issues to the Commission’s satisfaction.” The issues to which the Commission refers were directed primarily to United not ORS, and were of such a nature that only United could provide appropriate answers. Notwithstanding, page 14 of the Order states in reference to the “requests” that “the Parties have failed or refused to provide” evidence. Page 16 states, “the Parties consciously chose not to respond to the Commission’s inquiries....” Footnote 10 on page 17 states, “the Parties simply chose not to provide the requisite evidence necessary,” and “the Parties chose to ignore the directives of this Commission to provide additional information.” As a party, ORS disputes these assertions that it was unwilling to address issues, failed to provide evidence, consciously chose not to provide information and ignored directives. As stated above, the issues were mainly within the purview of United. The Commission, through its directives and orders, repeatedly characterized its demands as requests. Yet, the decision reached in Order No. 2006-593 and the attendant discussion contained therein, clearly show that the “requests” from the Commission were not requests but mandates for information. The failure to respond to these mandates was fatal to a fair consideration of the record presented to support the Settlement Agreement. Further, notwithstanding that it is the exclusive right of ORS to determine what evidence and witnesses to offer in a case⁸², ORS provided all information it had available.

(b) The Commission also cites class action rules of civil procedure in support of the Commission’s proposition that it has a separate and independent obligation to review settlement agreements.⁸³ This is a novel assertion as class action procedures

⁸² See S.C. Code Ann. §58-4-20(B), (Supp. 2005).

⁸³ See footnote 18 on page 25 of the Order.

are specific and narrowly tailored to just what they were created to apply to – class actions. Nowhere in the Commission’s rules or regulations are any procedures akin to those in a class action. This is wholly unlike a proceeding before the Commission, and it is error for the Commission to apply inapplicable rules to support its proposition. ORS submits that it is charged with representing the public interest and that such public interest was adequately represented and protected by ORS. ORS believes that the Commission’s assertion of using class action rules to support its proposition that it has a separate and independent obligation to protect the public interest is error.

WHEREFORE, having set forth the proper grounds, ORS requests that the Commission issue an order:

- A. Granting this Petition for rehearing or reconsideration and approving the Settlement Agreement;
- B. Revising Order No. 2006-593 to be consistent with Orders 2006-284 and 2006-338 and consistent with S.C. Code Ann. § 58-4-100 (Supp. 2005); and
- C. Granting such other relief as is just and proper.

Respectfully submitted,

/s/ Shannon Bowyer Hudson

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Attorneys for South Carolina
Office of Regulatory Staff

Columbia, South Carolina
This 9th day of November, 2006

181727

C. DUKES SCOTT
EXECUTIVE DIRECTOR

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Columbia, S.C. 29211



Phone: (803) 737-0800
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DAN E. ARNETT
CHIEF OF STAFF

September 7, 2006

The Honorable G. O'Neal Hamilton
Chairman, Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RECEIVED
2006 SEP -7 AM 10:09
SC PUBLIC SERVICE
COMMISSION

Re: Docket No. 2006-107-WS: United Utility Companies, Incorporated ("UUC")
Application for Adjustment of Rates and Charges and Modifications to
Certain Terms and Conditions for the Provision of Water and Sewer Service

Dear Chairman Hamilton:

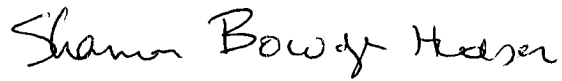
The purpose of this letter is to supplement the parties' Settlement Agreement.

ORS has a representative of our Consumer Services Department at each night hearing. Also, it is the policy of ORS to contact, either orally or in writing, each customer witness who testifies that he or she has a service issue which has not been resolved. ORS has followed its policy in this docket. ORS also advises customers of their right to file a formal complaint with the Commission.

A total of fifty-six UUC customers testified at the five night hearings held in this docket in Anderson, Greenville, Spartanburg, Cherokee and Union counties. (UUC has 100 water customers and 1,797 wastewater customers.) Forty-one of them voiced their opposition to the proposed rate increase and did not address any service quality issues in their testimonies. Thirteen customers testified to billing or other service quality concerns. One customer stated that he had a buyer for the UUC system and another customer stated she had some questions and was directed to ORS.

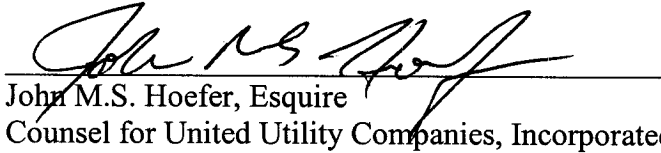
The parties have agreed to file this letter with the Commission as a supplement to their Settlement Agreement on file in this Docket and ask that the Commission accept it as such. We appreciate the opportunity to bring these matters to the attention of the Commission.

Respectfully submitted,



Nanette S. Edwards
Shannon B. Hudson
Attorneys for ORS

AGREED TO ON BEHALF OF APPLICANT


John M.S. Hoefer, Esquire
Counsel for United Utility Companies, Incorporated

cc: Vice Chairman C. Robert Moseley
Commissioner John E. Howard
Commissioner David A. Wright
Commissioner Randy Mitchell
Commissioner Elizabeth B. Fleming
Commissioner Mignon L. Clyburn
Charles L. A. Terreni, Esquire
Duke K. McCall, Esquire
Rebecca H. Zabel, Esquire
George K. Lyall, Esquire
Jacqueline H. Patterson, Esquire

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS - ORDER NO. 2006-582

OCTOBER 9, 2006

IN RE:	Application of Tega Cay Water Service, Inc.)	ORDER APPROVING
	for Adjustment of Rates and Charges and)	RATES AND CHARGES
	Modifications to Certain Terms and)	
	Conditions for the Provision of Water and)	
	Sewer Service.)	

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on the application for an increase in rates and charges filed by Tega Cay Water Service, Inc. (“TCWS” or “the Company”). A Joint Motion for Settlement Hearing and Adoption of Settlement Agreement (“the Joint Motion”) was subsequently filed by the South Carolina Office of Regulatory Staff (“ORS”) and TCWS (together referred to as the “Parties” or sometimes individually as a “Party”).

This original application for approval of rates and charges was noticed in compliance with the instructions of the Commission’s Docketing Department. No Petitions to Intervene were filed; however, several protests were received by this Commission. The Commission held a public hearing in the service area on July 11, 2006. Subsequently, the Parties represented to the Commission that they had engaged in discussions on the issues of this case and determined that their interests and the public interest would best be served by settling all issues pending in the above-captioned case

under the terms and conditions set forth in a Settlement Agreement (the “Settlement Agreement,” also referred to as the “Stipulation” herein) executed by the Parties. The Joint Motion for a Settlement Hearing was granted.¹

On August 22, 2006, the Commission held a hearing for the parties to describe the Settlement and to provide opportunity for public comment on the Settlement Agreement.² An evidentiary hearing was also held on the Settlement Agreement on August 29, 2006 (“the Settlement hearing”). At the Settlement hearing, TCWS was represented by John M.S. Hoefer, Esquire, and ORS was represented by Wendy B. Cartledge, Esquire, and Jeffrey M. Nelson, Esquire. The testimony of various witnesses was filed with the Settlement Agreement, and the parties requested that that testimony and any exhibits attached to the testimony be stipulated into the record of the case, along with the prefiled testimony of certain other witnesses. The only “live” testimony presented by the parties occurred at the August 29, 2006, hearing with the presentation of Converse Chellis, CPA, and B.R. Skelton, Ph.D.

In addition to presenting the testimonies of witnesses Chellis and Skelton, the Parties agreed to stipulate and to include in the hearing record of this case the prefiled direct testimonies of Willie J. Morgan, Lena Sunardio, and Bruce T. Haas, including all attached exhibits, as well as portions of the prefiled rebuttal of Haas, and the testimony of Daniel Sullivan with revised Audit Exhibits. The testimonies of ORS witness Sullivan (and his exhibits) and Company witness Skelton provide sufficient support to allow the

¹ The Settlement Agreement and Exhibits are attached to this Order as Order Exhibit 1.

² No members of the public appeared in opposition to the Settlement Agreement.

Commission the discretion to adopt the Settlement Agreement. Sullivan's testimony provides grounds for adoption of the agreed upon accounting adjustments proposed by the parties in settlement. The testimony of Company witness Skelton supports the agreed upon rate of return.³

Based on the reasoning stated below, we approve the Settlement Agreement proposed by the parties, albeit with reservations about the manner in which it was presented.

II. RULING ON TEGA CAY WATER SERVICE'S OBJECTIONS

The objections lodged by the Company with regard to this Commission's receipt of testimony from the public on the issues of customer service, quality of service, and customer relations are overruled. See Transcript of Testimony and Proceedings, July 11, 2006 at 6-7; see also Letter of TCWS (dated August 21, 2006). The Company had objected to public testimony on the grounds of possible due process violations, circumvention of Commission complaint procedures, and improper use of the public testimony to determine just and reasonable rates.

First, there are no due process violations. The Company has had the opportunity to file, and has filed, responses to the customers' testimony. It chose not to call witnesses to address customers' testimony. Second, there is no circumvention of complaint procedures. Clearly, the evening public hearing held in this case was for the express

³ While Skelton did not give any specific explanation to support his conclusion that the agreed upon rates were just and reasonable and adequate for the Company, we assume, based on his testimony and responses to questions, that he had read and was familiar with the earlier prefiled testimonies of Company witness Ahern and ORS witness Wooldridge in formulating his opinion. Upon entering into the Settlement Agreement, the parties withdrew Wooldridge's and Ahern's prefiled testimonies. See also Transcript of August 29, 2006 Hearing at 8-9.

purpose of receiving public opinion regarding the proposed rate increase and hearing any public comments, including complaints about the Company's service. "Quality of service" is a component that this Commission is required to consider in arriving at just and reasonable rates for the Company. Third, the Parties' objection that the Commission improperly used public testimony to determine just and reasonable rates in the present case is moot since the Commission is adopting the parties' own proposed rates as contained in the Settlement Agreement.

The objections are overruled, including the Company's objection to the Hearing Exhibits filed by the members of the public. The Company objected to all public hearing exhibits as being related to unsubstantiated complaints. However, these exhibits did not affect the Commission's ruling on the stipulations of the parties and are immaterial to this Order.

III. SUMMARY OF SETTLEMENT AGREEMENT

In its Application, TCWS requested an increase in annual revenues of \$196,542. For the Settlement, the parties agree to an increase in net annual revenues of \$59,619.⁴ As approved, TCWS receives approximately thirty percent (30%) of the proposed annual revenue set forth in its Application. The Company's last rate increase was in 1999.

As part of the settlement, the Company agreed to accept ORS's adjustments, as reflected in the Settlement Audit Exhibits, including the removal of the plant acquisition adjustment (PAA) from TCWS rate base (Adjustment #6) and from the calculation of net

⁴ The Company requested an increase in gross revenue of \$197,199 and an increase in uncollectible accounts of \$(657) which result in a net annual revenue increase of \$196,542. The Settlement Agreement included an increase in gross revenue of \$59,816 and an increase in uncollectible revenue of \$(197) which result in a net annual revenue increase of \$59,619.

income for return through amortization of the PAA (Adjustment #21). Additionally, as part of the settlement, the Company agreed to the exclusion of the 4% salary increase requested by TCWS. Under the proposed settlement rates, a residential water customer would experience a six cent per month increase in the basic facilities charge for water and no increase in the water commodity charge. With regard to sewer rates, a customer would receive a \$2.93 increase per Single Family Equivalent (SFE) in the monthly sewer charge.

The approved Settlement Agreement gives TCWS a net annual revenue increase of \$59,619. This net revenue increase is based on a stipulated return on equity of 9.40% and a return on rate base of 7.64%, with a resultant operating margin of 6.95%. As a part of the Settlement, TCWS agrees to file a performance bond for water service in the amount of \$300,000 and a performance bond for sewer service in the amount of \$350,000 by December 31, 2006. TCWS also agrees to deposit unclaimed refund monies with the State in the amount of \$10,822.92 which is the balance of refund monies posted to inactive accounts per Commission Order Nos. 1999-191, 1999-457, and 1999-733 resulting from TCWS' last rate case.

IV. DISCUSSION

A. The Commission has the Power and Jurisdiction to Independently Review Settlement Agreements in Utility Rate Cases.

By statute, the Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the duty, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed

and followed by every public utility in this State. S.C. Code Ann. Section 58-5-210 (1976). Further, it is incumbent upon the Commission to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company's service is rendered and the quality of that service. Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E. 2d 672 (1991).

At the August 29 hearing, counsel for TCWS candidly stated the position taken by the Company and the ORS regarding the Commission's power to independently review settlement agreements in utility rate cases:

It would be almost like....the parties come to you in the settlement of a wreck case, and one of the litigants has said, 'well, you know what, I've got a soft tissue injury and the chiropractor has told me I need, you know, this amount of therapy, and I want this amount of money.' But, they settled and that party comes to you and says, 'my concerns are resolved in that regard. I no longer need that therapy,' 'then the question is not whether you should order that therapy. The question is whether or not the parties' interest are reasonably resolved by the Settlement Agreement, and I think as you heard from both of the witnesses that I offered in support of the Settlement Agreement, the parties are always much better off devising their own resolution than having one imposed.

And so, the difference, the distinction, I would make for you,is, you don't have a party in this case telling you that this Settlement is not reasonable; you don't have a party in this case telling you that the Settlement is not in the parties' interest; and you don't have a party in this case telling you the public interest has not been served.

Transcript of Settlement Hearing, pp. 25, l. 24 – 26, l. 21.

We categorically reject this argument. The difference between the settlement of a public utility rate case and the settlement of a private dispute involving a "soft tissue"

automobile accident claim is obvious to this Commission. The former implicates this Commission's granting the authority to impose rates and charges on the customers of a state chartered monopoly, while the latter involves the settlement of a purely private controversy. TCWS and the ORS are essentially arguing that the Commission has no choice but to approve a settlement on the basis of their bald representations that it is just and reasonable and serves the public interest. This interpretation of the law is incorrect; it is not in the best interest of the customers of this state's regulated utilities. The Commission will not abdicate its duty to independently review a settlement agreement. An agency may not accept a settlement merely because the parties before it are satisfied; rather, an agency must consider whether the public interest will be served by accepting the settlement. See Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc., 664 N.E. 2d 401, 406 (1993).

Further, the Settlement Policies and Procedures of the Commission (Revised 6/13/2006) address this issue. Section II of that document ("Consideration of Settlements") states:

When a settlement is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement for the Commission's consideration of the settlement. For example, the Commission may summarily accept settlement of an essentially private dispute that has no significant implications for regulatory law or policy or for other utilities or customers upon the written request of the affected parties. On the other hand, when the settlement presents issues of significant implication for other utilities, customers, or the public interest, the Commission will convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Approval of

such settlements shall be based upon substantial evidence in the record.

Clearly, these Settlement Policies and Procedures differentiate between settlements in the type of private case (“soft tissue injury”) referred to by counsel for TCWS, and the case before us, where the settlement presents issues of significant implication for customers and/or the public interest.

As recognized by the Settlement Policies and Procedures, this Commission was clearly correct in convening “an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.” The counsel for the Company is wrong in his attempt to characterize this case as a private matter between the Company and ORS. There is no question that this matter concerns the interests of the Company’s customers, and the public interest in general.

Act No. 175 of 2004, which established the Office of Regulatory Staff, did not change the duties of the Commission in this regard.⁵ The parties, through their attorneys, expressed the opinion that, because ORS is the representative of the public interest, the Commission need not concern itself with an independent consideration and/or

⁵ Act 175 clearly did not include any explicit repeal of Section 58-5-210, and the South Carolina Supreme Court very recently reiterated the longstanding rule that implied repeal is extraordinary and disfavored under South Carolina law:

Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006) (citing City of Rock Hill v. South Carolina DHEC, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990)).

determination of the issues, including whether or not the rates resulting from the Stipulation were just and reasonable and/or whether the public interest was served by the Stipulation. Tr. at 20; 24-25. This position is not in accord with existing law. The ORS is charged with representing the public interest in Commission proceedings, and it is also charged with making recommendations to the Commission with respect to standards, regulations, practices, or service of any public utility. S.C. Code Ann. Section 58-4-50(4) and (7) (Supp. 2005). (emphasis added). The ultimate decision as to what constitutes just and reasonable rates remains with the Commission.

B. The Settlement Agreement Fails to Address Several Issues.

This Settlement Agreement fails to speak to several issues which were either raised by the Parties or by TCWS's customers. These issues concern the Commission, but are not of sufficient magnitude to cause it to reject a settlement agreement which is otherwise just and reasonable. We believe that these issues should be dealt with on an administrative basis. However, we will briefly discuss these issues.

The Settlement Agreement specifically proposes the adoption of the prefiled direct testimony of ORS witness Willie J. Morgan. Settlement Agreement at 2. Beginning at page 10 of that testimony, Morgan describes a water loss problem with the Company, and, ultimately, calls for a water audit. TCWS provided information to Morgan stating that there is a difference between the purchased water quantity and the water sold to its customers. This difference is caused by leaks in the system, water used at the three wastewater treatment facilities, and an overflow issue at the Company's water tower. Morgan Testimony at 11. Morgan admits the Company's water loss does not directly

affect the Company's customers' bills, since their monthly water bills are based on the customers' usage registered through meter readings. He argues that water loss on the system could, however, indirectly impact the customers if the wholesaler, York County, raises wholesale rates to its customers. Id. However, he does not quantify the potential impact of the water loss on these ratepayers.

Morgan did not appear at the settlement hearing, and the Settlement Agreement does not directly address this issue. Further, no responsive testimony is before us. When this issue, among others, was raised by the Commission in the settlement hearing, this Commission heard different responses from the Parties. Counsel for TCWS stated that, "as part of the settlement, both parties agreed that all the issues have been resolved to their satisfaction." (emphasis added). Transcript of Settlement Hearing of August 29, 2006 at 15. However, counsel for ORS stated, "we believe the issues have either been resolved already or will be resolved through the Tega Cay Water Company's cooperation with the Office of Regulatory Staff." Id. at 23. (emphasis added). In additional discourse with the Commission, ORS counsel stated, "There are some issues that are still out there specifically as to the amount, where the water loss has been coming from. We don't know if it's a significant issue or not; however, we are, and the Company has agreed to continue to work with the Office of Regulatory Staff, to attempt to identify any potential water loss..." Id. at 31.

Although we are not convinced that the water loss issue was conclusively resolved, as shown by the statements of counsel cited above, we agree with Morgan that, at best, TCWS' water losses could have a potential indirect effect on the Company's

customers' bills. Accordingly, we believe that this issue may be dealt with administratively by another method, and that it should not prevent this Commission from approving the Settlement Agreement.

Likewise, the Company's customers complained of quality of service problems, such as poor quality of water, low water pressure, billing and meter reading inaccuracies, and sewerage backups at the July 11, 2006 evening public hearing. We would note that the Rebuttal Testimony of Company witness Haas attempts to address some of these issues, but his testimony does not respond to all of the stated quality of service problems. However, we are satisfied that the various matters of service quality may be addressed administratively through action outside of this Docket, such as through reports and inspections requested pursuant to S.C. Code Ann. Sections 58-3-190 and 58-3-200 (Supp. 2005) and other appropriate measures. This is not to say that the mechanisms provided by these statutes will necessarily be sufficient to address the Commission's concerns in other cases, but we believe that they will be adequate in the present case.

V. CONCLUSION

Accordingly, we have examined the Settlement Agreement in the present case, and we believe that the evidence provided is so deficient that it is within the Commission's discretion to deny the requested rate increases. However, in spite of the weakness of some of the evidence provided by the parties to support their settlement, we are convinced that the settlement rates, which are much lower than those originally applied for, should be approved. The increases described herein in Section III appear to be reasonable, despite the lack of strong supporting evidence in the areas described

above. Although we are troubled about the failure of the parties to provide all appropriate witnesses in support of the Settlement, we hold that the Settlement in this case produces rates which are just and reasonable. We would, however, urge the parties to make all appropriate witnesses available in the future to address Commission concerns that arise. Further, witnesses should be presented to address issues raised by the parties themselves which remain unresolved, such as the water audit question. With regard to the present case, we are satisfied that the other matters of concern to this Commission can be addressed administratively through action taken outside of this case.

VI. ORDER

IT IS THEREFORE ORDERED THAT:

1. The Stipulation between the parties is approved and adopted by this Commission as producing just and reasonable rates, and a reasonable rate of return to the Company. The rates imposed shall be those rates agreed upon in the Stipulation between the parties as shown in Order Exhibit 1 and shall be effective on and after the date of issuance of this Order.
2. The Company is entitled to the opportunity to earn a 9.40% return on equity, a 7.64% return on rate base, and a 6.95% operating margin.

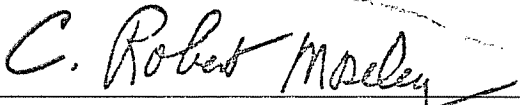
3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-97-WS

August 21, 2006

Application of Tega Cay Water)	
Service, Inc. for adjustment of)	SETTLEMENT AGREEMENT
rates and charges and modifications to)	
certain terms and conditions for the)	
provision of water and sewer service.)	
_____)	

This Settlement Agreement is made by and between the Office of Regulatory Staff ("ORS") and Tega Cay Water Service, Inc. ("TCWS" or "the Company") (together referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, the Company has prepared and filed an Application seeking an adjustment of its rates and charges and modifications to certain terms and conditions set out in its rate schedule for the provision of its water and sewer service;

WHEREAS, the above-captioned proceeding has been established by the South Carolina Public Service Commission ("Commission") pursuant to the procedure established in S.C. Code Ann. § 58-5-240 (Supp. 2005), and the Parties to this Settlement Agreement are the only parties of record in the above-captioned docket;

WHEREAS, since the filing of the Application, ORS has propounded numerous data requests to TCWS and the Company has provided those responses to ORS;

WHEREAS, ORS has audited the books and records of the Company relative to the matters raised in the Application and, in connection therewith, has requested of and received from the Company additional documentation;

WHEREAS, the Parties have varying legal positions regarding the issues in this case;

WHEREAS, the Parties have engaged in discussions to determine if a settlement of the issues would be in their best interests and, in the case of ORS, in the public interest; and

WHEREAS, following those discussions the Company has determined that its interests and ORS has determined that the public interest would be best served by stipulating to a comprehensive settlement of all issues pending in the above-captioned case under the terms and conditions set forth herein;

NOW, THEREFORE, the Parties hereby stipulate and agree to the following terms, which, if adopted by the Commission in its Order on the merits of this proceeding, will result in rates and terms and conditions of water and sewer service which are adequate, just, reasonable, nondiscriminatory, and supported by the evidence of record of this proceeding, and which will allow the Company the opportunity to earn a reasonable rate of return.

1. The Parties agree that no documentary evidence will be offered in the proceeding by the Parties other than: (1) the Application filed by the Company, (2) the exhibits to the testimony referenced in paragraph 2 below, and (3) this Settlement Agreement with Exhibits "A"- "E" attached hereto.

2. The Parties stipulate and agree to include in the hearing record of this case the pre-filed direct testimonies of Willie J. Morgan, Lena Sunardio and Bruce T. Haas, including all exhibits attached to said pre-filed testimonies, without objection, change, amendment, or cross-

examination. The Parties also stipulate and agree to include in the hearing record of this case without objection, change, amendment, or cross-examination the portion of the pre-filed rebuttal testimony of Bruce T. Haas attached hereto as Exhibit "A" and the testimony of Daniel Sullivan containing Revised Audit Exhibits DS-1 through DS-11 attached hereto as Exhibit "B". Further, the parties agree to include in the hearing record of this case without objection, change, amendment, or cross examination the Settlement testimony of witnesses B. R. Skelton, PhD. and Converse A. Chellis, III, CPA, attached hereto and incorporated herein by this reference as Exhibits "C" and "D".

3. The Parties stipulate and agree that the accounting exhibits prepared by ORS and attached to the testimony of Daniel Sullivan filed as Exhibit "B" hereto fairly and reasonably set forth the Company's operating expenses, pro forma adjustments, depreciation rates, rate base, return on equity at an agreed upon rate of 9.40%, revenue requirement, and rate of return on rate base.

4. The Parties stipulate and agree that the rate schedule attached hereto as Exhibit "E", including the rates and charges and terms and conditions of service, are fair, just, and reasonable. The Parties further stipulate and agree that the rates contained in said rate schedule are reasonably designed to allow the Company to provide service to its water and sewer customers at rates and terms and conditions of service that are fair, just and reasonable and the opportunity to recover the revenue required to earn a fair return on its investment..

5. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) reads in part as follows:

. . . 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the agreement reached between the Parties serves the public interest as defined above. The terms of this Settlement Agreement balance the concerns of the using public while preserving the financial integrity of the Company. ORS also believes the Settlement Agreement promotes economic development within the State of South Carolina. The Parties stipulate and agree to these findings.

6. In its Application, the Company requested an increase in annual revenues of \$196,542. As a compromise to their respective positions, the Parties stipulate and agree to an increase in annual revenues of \$59,619, said increase to be based upon the adjustments reflected in Exhibit "B" and the return on equity stipulated to by the Parties in Paragraph 7 below.

7. The Company and ORS recognize the value of resolving this proceeding by settlement rather than by litigation and, therefore stipulate and agree for purposes of settlement in this case that a return on equity of 9.40% is just and reasonable under the specific circumstances of this case in the context of a comprehensive settlement.

8. The Parties further stipulate and agree that the stipulated testimony of record, the Application, and this Settlement Agreement conclusively demonstrate the following: (i) the proposed accounting and pro forma adjustments and depreciation rates shown in Revised Audit Exhibits DS-1 through DS-11 of Exhibit "B" hereto are fair and reasonable and should be

adopted by the Commission for ratemaking and reporting purposes; (ii) a return on common equity of 9.40 %, which yields a fair rate of return on rate base for the Company of 7.64%, an operating margin of 6.95%, and an annual increase in revenues of approximately \$59,619, is fair, just, and reasonable when considered as a part of this stipulation and settlement agreement in its entirety; (iii) TCWS's services are adequate and being provided in accordance with the requirements set out in the Commission's rules and regulations pertaining to the provision of water sewer and sewer service, and (iv) TCWS's rates as proposed in this Settlement Agreement are fairly designed to equitably and reasonably recover the revenue requirement and are just and reasonable and should be adopted by the Commission for service rendered by the Company on and after October 3, 2006.

9. The Parties further agree and stipulate that the rate schedule attached hereto as Exhibit "E", including the rates and charges and the terms and conditions set forth therein, are just and reasonable, reasonably designed, and should be approved and adopted by the Commission.

10. TCWS agrees and stipulates that it will file with the Commission a performance bond for water service in the amount of \$300,000 and a performance bond for sewer service in the amount of \$350,000 by December 31, 2006. TCWS further agrees and stipulates that it will, no later than December 31, 2006, deliver to the State of South Carolina the sum of \$10,822.92 pursuant to the terms of the South Carolina Uniform Unclaimed Property Act, which sum represents the balance of refund monies posted to inactive accounts per Order Nos. 1999-191, 1999-457 and 1999-733 in TCWS's last rate case.

11. The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

12. The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair, or prejudice their arguments made or positions held in other proceedings. If the Commission should decline to approve the agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation.

13. This Settlement Agreement shall be interpreted according to South Carolina law.

14. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement

and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

Docket No. 2006-97-WS

Order No. 2006-582

October 9, 2006

WE AGREE:

Representing the South Carolina Office of Regulatory Staff

Wendy B. Cartledge

Wendy B. Cartledge, Esquire

Jeffrey M. Nelson, Esquire

S.C. Office of Regulatory Staff

Post Office Box 11263

1441 Main Street (Suite 300)

Columbia, SC 29211

Phone: (803) 737-0863/(803) 737-0823

Fax: (803) 737-0895

E-mail: wcartle@regstaff.sc.gov

jnelson@regstaff.sc.gov

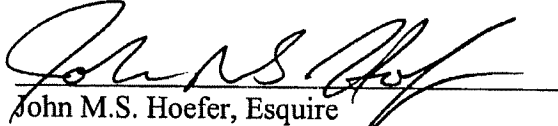
Docket No. 2006-97-WS

Order No. 2006-582

October 9, 2006

WE AGREE:

Representing Tega Cay Water Service, Inc.

A handwritten signature in dark ink, appearing to read "John M.S. Hofer", is written over a horizontal line.

John M.S. Hofer, Esquire

Willoughby & Hofer, P.A.

Post Office Box 8416

1022 Calhoun Street, Suite 302

Columbia, SC 29202-8416

Phone: (803) 252-3300

Fax: (803) 256-8062

E-mail: jhofer@willoughbyhofer.com

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-97-WS

IN RE:

Application of Tega Cay Water
Service, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

REBUTTAL TESTIMONY
OF
BRUCE T. HAAS

1 **Q. ARE YOU THE SAME BRUCE T. HAAS THAT HAS PREFILED DIRECT**
2 **TESTIMONY IN THIS CASE?**

3 **A. Yes, I am.**

5 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
6 **PROCEEDING, MR. HAAS?**

7 **A. The purpose of my rebuttal testimony is to respond on behalf of Tega Cay Water Service,**
8 **Inc., or "TCWS", to some of the specific and general comments our customers made**
9 **during the night hearing in this matter.**

10

11 **Q. WHAT CUSTOMER CONCERNS EXPRESSED AT THE NIGHT HEARING DO**
12 **YOU WISH TO RESPOND TO, MR. HAAS?**

13 **A. Two of our customers complained of recent incidences of low water pressure. The**
14 **reason these customers experienced low pressure was that the Company took its elevated**

1 storage facility off-line so that it could be painted. While we do regret the inconvenience,
2 the painting was necessary to maintain the system.

3 Two of our customers complained about faulty meter readings and inconsistent billing
4 dates. There were in fact occasions during the test year when personnel employed by our
5 contract meter reader did not perform their duties in a timely and proper manner. At the
6 Company's behest, our contractor discharged its personnel who were responsible and I
7 believe the problem has been resolved. Of course, we have adjusted the bills of
8 customers who were affected by erroneous meter readings and regret the inconvenience
9 that it caused.

10
11 Three of our customers complained about water clarity or particles. As the Commission
12 is aware, the Company purchases bulk water from York County. Occasionally, line
13 flushing can introduce particles which create an unpleasant appearance that cannot be
14 avoided. Our water meets all DHEC and EPA standards for consumption. Whenever a
15 customer complains about the appearance of the water and we have not been flushing
16 lines, we do investigate.

17
18 Two of our customers complained about sanitary sewer overflows, or SSOs. One
19 customer stated that the Company had thirteen SSOs in an eighteen month period and
20 asserted that York County only had 5 SSOs and Fort Mill none during that same period.
21 This customer also suggested that the SSOs were endangering the health of residents. I
22 would like to address these issues by explaining to the Commission what constitutes an

1 SSO, how DHEC regulates them, and why the comparisons made are not valid. An SSO
2 occurs whenever there is an unauthorized discharge of wastewater. These can occur from
3 lift stations, manholes or mains. However, an SSO is only required to be reported to
4 DHEC in one of two circumstances, which are when the discharge exceeds five hundred
5 gallons or when the discharge reaches a stream or other body of water. As the
6 Commission may have noticed when it visited Tega Cay for the night hearing, the
7 topography is very hilly and the property is situated on the shores of Lake Wylie. The
8 majority of the Company's main sewer lines and lift stations are located between the
9 residences and the shore lines. Accordingly, whenever an overflow occurs, there is a
10 good chance that the wastewater will reach the lake, resulting in a reportable discharge.
11 Based upon my knowledge of York County, neither the York County nor Fort Mill
12 systems have such proximity to a stream or other body of water. In fact, the customer
13 testifying on this point stated that York County's spills were from a force main on
14 Highway 49 and one in a residential development the County serves located some
15 distance from the lake. Additionally, although York County has a larger number of lift
16 stations than does TCWS, they are not concentrated in a single, hilly area like the lift
17 stations serving Tega Cay which makes immediate access for repairs difficult. So, I do
18 not believe that the comparison this customer seeks to draw is valid. With respect to the
19 putative health issues, I would note that none of these SSOs resulted in a fine of the
20 Company by DHEC. As this customer noted, ten of the thirteen SSOs were caused by
21 line blockages. Most of these were a combination of roots or grease. Grease collection
22 and root intrusion into lines are usually not discovered until an SSO occurs unless it is

1 revealed in the course of television inspection of our lines. We try to televise 10% of our
2 lines every year. Regarding our alarm systems for overflows, we have installed telemetry
3 devices at our lift stations to supplement the audible and visual alarms. And, as one of the
4 customers noted, we have instituted a voice reach program that contacts customers
5 telephonically to alert them whenever there is a problem on the system and that program
6 is working.

7

8 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

9 **A. Yes, it does.**

THE OFFICE OF REGULATORY STAFF
SETTLEMENT TESTIMONY
OF
DANIEL F. SULLIVAN



DOCKET NO. 2006-97-W/S
APPLICATION OF
TEGA CAY WATER SERVICE, INC.
FOR ADJUSTMENT OF RATES AND CHARGES

1

2

SETTLEMENT TESTIMONY OF DANIEL F. SULLIVAN

3

FOR

4

THE OFFICE OF REGULATORY STAFF

5

DOCKET NO. 2006-97-W/S

6

IN RE: TEGA CAY WATER SERVICE, INC.

7

8 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.**

9 A. My name is Daniel F. Sullivan. My business address is 1441 Main Street, Suite 300,
10 Columbia, South Carolina, 29201. I am employed by the Office of Regulatory Staff
11 (“ORS”) as an Auditor.

12 **Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND YOUR**
13 **BUSINESS EXPERIENCE.**

14 A. I received a B.S. Degree in Business Administration, with a major in Accounting
15 from the University of South Carolina in December 1998. From February 1999 to
16 February 2005, I was employed with the South Carolina State Auditor’s Office. In
17 that capacity, I performed audits and reviews of cost reports filed by institutional
18 providers of Medicaid services for the South Carolina Department of Health and
19 Human Services. The primary purpose of those audits and reviews was to establish
20 the applicable reimbursement rates to be paid to Medicaid providers for services
21 rendered to qualified Medicaid recipients. In February 2005, I began my
22 employment with ORS.

THE OFFICE OF REGULATORY STAFF
1441 Main Street, Suite 300, Columbia, SC 29201
Post Office Box 11263, Columbia, SC 29211

1 **Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY**
2 **INVOLVING TEGA CAY WATER SERVICE, INC?**

3 A. The purpose of my settlement testimony is to set forth the adjustments agreed upon
4 in the settlement agreement by ORS and Tega Cay Water Service, Inc. ("TCWS") in
5 this docket.

6 **Q. PLEASE IDENTIFY THE EXHIBITS ATTACHED TO YOUR**
7 **SETTLEMENT TESTIMONY.**

8 A. I have attached ORS's Settlement Audit Exhibits DFS-1 through DFS-11. The
9 Settlement Audit Exhibits were either prepared by me or were prepared under my
10 direction and supervision in compliance with recognized accounting and regulatory
11 procedures for water and wastewater utility rate cases.

12 **Q. PLEASE EXPLAIN THE CONTENTS OF THE REVISED AUDIT**
13 **EXHIBITS.**

14 A. The Settlement Audit Exhibits reflect a return on equity (ROE) of 9.40% and a return
15 on rate base of 7.64%. As part of the settlement, the Company agreed to accept
16 ORS's adjustments, as reflected in the attached Settlement Audit Exhibits, including
17 the removal of the plant acquisition adjustment (PAA) from TCWS rate base
18 (Adjustment #6) and from the calculation of net income for return through
19 amortization of the PAA (Adjustment #21). Additionally, as part of the settlement,
20 the Company agreed to the exclusion of the 4% salary increase requested by TCWS.

21 **Q: WHAT IS THE DOLLAR AMOUNT OF THE INCREASE PROPOSED BY**
22 **THE SETTLEMENT AGREEMENT?**

1 A: The Company requested an increase in annual net operating revenues of \$196,542 in
2 its application. As a compromise, ORS and the Company agree to an increase in
3 annual net operating revenues of \$59,619. This amount is approximately one-third of
4 the requested increase.

5 **Q. DOES THIS CONCLUDE YOUR SETTLEMENT TESTIMONY?**

6 A. Yes, it does.

7

Settlement Audit Exhibit DFS-1

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Combined Operations

<u>Description</u>	(1) Per Company Books \$	(2) Additional Adjustments Docket No. 1996-137-WS \$	(3) Adjusted Per Books \$	(4) Accounting and Pro Forma Adjustments \$	(5) As Adjusted Present \$	(6) Proposed Increase \$	(7) After Proposed Increase \$
<u>Operating Revenues:</u>							
Service Revenue - Water	346,686	0	346,686	132 (H)	346,818	1,201 (X)	348,019
Service Revenue - Sewer	600,216	0	600,216	1,734 (H)	601,950	58,615 (X)	660,565
Miscellaneous Revenues	14,148	0	14,148	0	14,148	0	14,148
Uncollectible Accounts	(3,158)	0	(3,158)	0	(3,158)	(197) (Y)	(3,355)
					0		
Total Operating Revenues	957,892	0	957,892	1,866	959,758	59,619	1,019,377
<u>Operating Expenses:</u>							
Maintenance Expenses	388,252	0	388,252	3,214 (I)	391,466	0	391,466
General Expenses	186,382	0	186,382	56,164 (J)	242,546	0	242,546
Depreciation Expense	245,264	0	245,264	(35,738) (K)	209,526	0	209,526
Taxes Other Than Income	206,869	(3,000) (A)	203,869	(81,629) (L)	122,240	673 (Z)	122,913
Income Taxes - State	1,338	958 (B)	2,296	364 (M)	2,660	2,947 (AA)	5,607
Income Taxes - Federal	58,992	(43,724) (C)	15,268	2,420 (N)	17,688	19,600 (AB)	37,288
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(171,782)	0	(171,782)	42,642 (P)	(129,140)	0	(129,140)
Total Operating Expenses	915,315	(45,766)	869,549	(12,563)	856,986	23,221	880,207
Total Operating Income	42,577	45,766	88,343	14,429	102,772	36,398	139,170
Interest During Construction	80	0	80	(80) (Q)	0	0	0
Customer Growth	0	0	0	1,207 (R)	1,207	429 (AC)	1,636
Net Income for Return	42,657	45,766	88,423	15,556	103,979	36,827	140,806
<u>Original Cost Rate Base:</u>							
Gross Plant in Service	12,042,383	(352,044) (D)	11,690,339	242,356 (S)	11,932,695	0	11,932,695
Accumulated Depreciation	(2,911,225)	90,318 (E)	(2,820,907)	54,657 (T)	(2,766,250)	0	(2,766,250)
					0		
Net Plant in Service	9,131,158	(261,726)	8,869,432	297,013	9,166,445	0	9,166,445
Cash Working Capital	71,830	0	71,830	7,422 (U)	79,252	0	79,252
Contributions in Aid of Construction	(6,815,144)	0	(6,815,144)	(42,642) (V)	(6,857,786)	0	(6,857,786)
Accumulated Deferred Income Taxes	(504,319)	0	(504,319)	0	(504,319)	0	(504,319)
Customer Deposits	(58,630)	0	(58,630)	0	(58,630)	0	(58,630)
Plant Acquisition Adjustment	284,833	(284,833) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	17,871	0	17,871	0	17,871	0	17,871
					0		
Total Rate Base	2,127,599	(546,559)	1,581,040	261,793	1,842,833	0	1,842,833
Return on Rate Base	2.00%		5.59%		5.64%		7.64%
Interest Expense	167,102	(107,114) (G)	59,988	9,933 (W)	69,921		69,921

Settlement Audit Exhibit DFS-2

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Water Operations

Description	(1) Per Company Books \$	(2) Additional Adjustments Docket No. 1996-137-WS \$	(3) Adjusted Per Books \$	(4) Accounting and Pro Forma Adjustments \$	(5) As Adjusted Present \$	(6) Proposed Increase \$	(7) After Proposed Increase \$
Operating Revenues:							
Service Revenue - Water	346,686	0	346,686	132 (H)	346,818	1,201 (X)	348,019
Miscellaneous Revenues	6,343	0	6,343	0	6,343	0	6,343
Uncollectible Accounts	(1,146)	0	(1,146)	0	(1,146)	(4) (Y)	(1,150)
Total Operating Revenues	351,883	0	351,883	132	352,015	1,197	353,212
Operating Expenses:							
Maintenance Expenses	111,285	0	111,285	1,658 (I)	112,943	0	112,943
General Expenses	96,192	0	96,192	28,535 (J)	124,727	0	124,727
Depreciation Expense	64,638	0	64,638	2,374 (K)	67,012	0	67,012
Taxes Other Than Income	105,160	(3,000) (A)	102,160	(42,129) (L)	60,031	14 (Z)	60,045
Income Taxes - State	486	409 (B)	895	(80) (M)	815	59 (AA)	874
Income Taxes - Federal	21,408	(15,454) (C)	5,954	(537) (N)	5,417	394 (AB)	5,811
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(42,344)	0	(42,344)	10,485 (P)	(31,859)	0	(31,859)
Total Operating Expenses	356,825	(18,045)	338,780	306	339,086	466	339,552
Total Operating Income	(4,942)	18,045	13,103	(174)	12,929	731	13,660
Interest During Construction	20	0	20	(20) (Q)	0	0	0
Customer Growth	0	0	0	147 (R)	147	8 (AC)	155
Net Income for Return	(4,922)	18,045	13,123	(47)	13,076	739	13,815
Original Cost Rate Base:							
Gross Plant in Service	3,003,103	(352,044) (D)	2,651,059	22,926 (S)	2,673,985	0	2,673,985
Accumulated Depreciation	(731,857)	90,318 (E)	(641,539)	5,470 (T)	(636,069)	0	(636,069)
Net Plant in Service	2,271,246	(261,726)	2,009,520	28,396	2,037,916	0	2,037,916
Cash Working Capital	25,935	0	25,935	3,774 (U)	29,709	0	29,709
Contributions in Aid of Construction	(1,686,534)	0	(1,686,534)	(10,485) (V)	(1,697,019)	0	(1,697,019)
Accumulated Deferred Income Taxes	(273,990)	0	(273,990)	0	(273,990)	0	(273,990)
Customer Deposits	(30,259)	0	(30,259)	0	(30,259)	0	(30,259)
Plant Acquisition Adjustment	39,157	(39,157) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	9,223	0	9,223	0	9,223	0	9,223
Total Rate Base	354,778	(300,883)	53,895	21,685	75,580	0	75,580
Return on Rate Base	-1.39%		24.35%		17.30%		18.28%
Interest Expense	41,993	(39,948) (G)	2,045	823 (W)	2,868		2,868

Settlement Audit Exhibit DFS-3

Tega Cay Water Service, Inc.
Operating Experience, Rate Base and Rates of Return
For the Test Year Ended September 30, 2005
Sewer Operations

<u>Description</u>	(1) <u>Per Company Books</u> \$	(2) <u>Additional Adjustments Docket No. 1996-137-WS</u> \$	(3) <u>Adjusted Per Books</u> \$	(4) <u>Accounting and Pro Forma Adjustments</u> \$	(5) <u>As Adjusted Present</u> \$	(6) <u>Proposed Increase</u> \$	(7) <u>After Proposed Increase</u> \$
<u>Operating Revenues:</u>							
Service Revenue - Sewer	600,216	0	600,216	1,734 (H)	601,950	58,615 (X)	660,565
Miscellaneous Revenues	7,805	0	7,805	0	7,805	0	7,805
Uncollectible Accounts	(2,012)	0	(2,012)	0	(2,012)	(193) (Y)	(2,205)
<u>Total Operating Revenues</u>	606,009	0	606,009	1,734	607,743	58,422	666,165
<u>Operating Expenses:</u>							
Maintenance Expenses	276,967	0	276,967	1,556 (I)	278,523	0	278,523
General Expenses	90,190	0	90,190	27,629 (J)	117,819	0	117,819
Depreciation Expense	180,626	0	180,626	(38,112) (K)	142,514	0	142,514
Taxes Other Than Income	101,709	0 (A)	101,709	(39,500) (L)	62,209	660 (Z)	62,869
Income Taxes - State	852	549 (B)	1,401	444 (M)	1,845	2,888 (AA)	4,733
Income Taxes - Federal	37,584	(28,270) (C)	9,314	2,957 (N)	12,271	19,206 (AB)	31,477
Amortization of PAA	0	0	0	0 (O)	0	0	0
Amortization of CIAC	(129,438)	0	(129,438)	32,157 (P)	(97,281)	0	(97,281)
<u>Total Operating Expenses</u>	558,490	(27,721)	530,769	(12,869)	517,900	22,754	540,654
<u>Total Operating Income</u>	47,519	27,721	75,240	14,603	89,843	35,668	125,511
Interest During Construction	60	0	60	(60) (Q)	0	0	0
Customer Growth	0	0	0	1,060 (R)	1,060	421 (AC)	1,481
<u>Net Income for Return</u>	47,579	27,721	75,300	15,603	90,903	36,089	126,992
<u>Original Cost Rate Base:</u>							
Gross Plant in Service	9,039,280	0 (D)	9,039,280	219,430 (S)	9,258,710	0	9,258,710
Accumulated Depreciation	(2,179,368)	0 (E)	(2,179,368)	49,187 (T)	(2,130,181)	0	(2,130,181)
Net Plant in Service	6,859,912	0	6,859,912	268,617	7,128,529	0	7,128,529
Cash Working Capital	45,895	0	45,895	3,648 (U)	49,543	0	49,543
Contributions in Aid of Construction	(5,128,610)	0	(5,128,610)	(32,157) (V)	(5,160,767)	0	(5,160,767)
Accumulated Deferred Income Taxes	(230,329)	0	(230,329)	0	(230,329)	0	(230,329)
Customer Deposits	(28,371)	0	(28,371)	0	(28,371)	0	(28,371)
Plant Acquisition Adjustment	245,676	(245,676) (F)	0	0	0	0	0
Water Service Corporation - Rate Base	8,648	0	8,648	0	8,648	0	8,648
<u>Total Rate Base</u>	1,772,821	(245,676)	1,527,145	240,108	1,767,253	0	1,767,253
<u>Return on Rate Base</u>	2.68%		4.93%		5.14%		7.19%
<u>Interest Expense</u>	125,109	(67,166) (G)	57,943	9,110 (W)	67,053		67,053

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>Adjustments From Docket No. 1996-137-WS</u>			
<u>(A) Taxes Other Than Income</u>			
1 ORS proposes to remove property taxes associated with wells no longer used and useful.			
Per ORS	(3,000)	(3,000)	0
Per TCWS	0	0	0
<u>(B) Income Taxes - State</u>			
2 ORS proposes to adjust for state income taxes due to the adjustments from Docket No. 1996-137-WS.			
Per ORS	958	409	549
Per TCWS	0	0	0
<u>(C) Income Taxes - Federal</u>			
3 ORS propose to adjust for federal income taxes due to the adjustments from Docket No. 1996-137-WS.			
Per ORS	(43,724)	(15,454)	(28,270)
Per TCWS	0	0	0
<u>(D) Gross Plant In Service</u>			
4 ORS and TCWS propose to adjust plant in service by (\$352,044) for the removal of wells deemed not used and useful.			
Per ORS	(352,044)	(352,044)	0
Per TCWS	(352,044)	(352,044)	0
<u>(E) Accumulated Depreciation</u>			
5 ORS and TCWS propose to adjust accumulated depreciation by \$90,318 for the removal of wells deemed not used and useful.			
Per ORS	90,318	90,318	0
Per TCWS	90,318	90,318	0

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>(F) Plant Acquisition Adjustment</u>			
6 ORS proposes to remove the plant acquisition adjustment since it was removed by staff and TCWS and approved by the PSC in the previous rate case proceeding.			
Per ORS	<u>(284,833)</u>	<u>(39,157)</u>	<u>(245,676)</u>
Per TCWS	<u>0</u>	<u>0</u>	<u>0</u>
<u>(G) Interest on Debt</u>			
7 ORS proposes to adjust interest on debt using a 59.10% / 40.90% debt / equity ratio and a 6.42% cost of debt. ORS proposes to compute allowable interest expense as adjusted per books.			
Per ORS	<u>(107,114)</u>	<u>(39,948)</u>	<u>(67,166)</u>
Per TCWS	<u>0</u>	<u>0</u>	<u>0</u>
<u>Accounting and Pro Forma Adjustments</u>			
<u>(H) Operating Revenues</u>			
8 ORS and TCWS propose to adjust test year operating revenues to agree with test year consumption data.			
Per ORS	<u>1,866</u>	<u>132</u>	<u>1,734</u>
Per TCWS	<u>1,765</u>	<u>24</u>	<u>1,741</u>
<u>(I) Maintenance Expenses</u>			
9 ORS and TCWS propose to adjust operators' salaries. ORS proposes to annualize operators' salary expenses using wage rates as of May 2006 and wage allocation factors as of September 2005. ORS did not include a 4% cost of living increase since this amount was not known and measurable at the end of the audit. TCWS included a 4% cost of living increase.			
Per ORS	3,876	2,000	1,876
Per TCWS	11,183	5,770	5,413

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
10 TCWS proposes to amortize deferred operations and maintenance charges over 5 years. ORS does not propose to amortize deferred operations and maintenance charges since projects were not started and expenses were not incurred during the test year.			
Per ORS	0	0	0
Per TCWS	24,960	24,960	0
11 ORS and TCWS propose to adjust operating expense charged to plant to reflect the proposed increase in the wage adjustment. ORS computed a factor of 12.53% using actual test year data. TCWS used a capitalization factor of 11.58% which was based on annualized wages.			
Per ORS	(662)	(342)	(320)
Per TCWS	310	160	150
<u>Total Maintenance Expenses</u>	<u>3,214</u>	<u>1,658</u>	<u>1,556</u>

(J) General Expenses

12 ORS and TCWS propose to adjust office salary expenses. ORS annualized salaries using wage rates as of May 2006 and wage allocations as of September 2005. ORS did not include a 4% cost of living increase since this amount was not known and measurable at the end of the audit. TCWS included a 4% cost of living increase.

Per ORS	8,561	4,418	4,143
Per TCWS	11,447	5,907	5,540

13 ORS and TCWS propose to include current rate case expenses amortized over a three-year period. ORS proposes to include TCWS's portion of the Utilities Inc. Management Audit costs amortized over a three-year period. ORS adjusted rate case expenses for actual documented expenses and also included \$3,808 in water and \$4,442 in sewer for the additional letters of credit.

Per ORS	46,196	23,391	22,805
Per TCWS	57,387	29,617	27,770

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
14 ORS and TCWS propose to adjust for pension and other benefits associated with the wage increase.			
Per ORS	1,810	934	876
Per TCWS	(1,946)	(1,005)	(941)
15 ORS proposes to remove one half of Chamber of Commerce dues (\$260) and a 7 day personal newspaper subscription (\$143) to the Charlotte Observer, for total nonallowable expenses for ratemaking purposes of (\$403).			
Per ORS	(403)	(208)	(195)
Per TCWS	0	0	0
<u>Total General Expenses</u>	<u>56,164</u>	<u>28,535</u>	<u>27,629</u>
<u>(K) Depreciation Expense</u>			
16 TCWS proposes to annualize depreciation expense using estimated plant additions and a 1.5% depreciation rate. ORS proposes to annualize depreciation expense for known and measurable plant in service using a 1.5% depreciation rate. Both TCWS and ORS include extraordinary retirement of the wells as part of the adjustment to depreciation expense. See Settlement Audit Exhibit DFS-5 for details.			
Per ORS	<u>(35,738)</u>	<u>2,374</u>	<u>(38,112)</u>
Per TCWS	<u>(26,984)</u>	<u>8,945</u>	<u>(35,929)</u>
<u>(L) Taxes Other Than Income</u>			
17 ORS and TCWS propose to adjust for payroll taxes associated with the wage adjustment.			
Per ORS	(100)	(52)	(48)
Per TCWS	565	291	274
18 ORS and TCWS propose to remove a tax accrual for property taxes to reflect actual test year expense.			
Per ORS	(81,529)	(42,077)	(39,452)
Per TCWS	<u>(81,529)</u>	<u>(42,077)</u>	<u>(39,452)</u>
<u>Total Taxes Other Than Income</u>	<u>(81,629)</u>	<u>(42,129)</u>	<u>(39,500)</u>

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>(M) Income Taxes - State - As Adjusted</u>			
19 ORS and TCWS propose to adjust state income taxes after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS - 6.			
Per ORS	364	(80)	444
Per TCWS	(2,585)	(2,266)	(319)
<u>(N) Income Taxes - Federal - As Adjusted</u>			
20 ORS and TCWS propose to adjust federal income taxes after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS - 6.			
Per ORS	2,420	(537)	2,957
Per TCWS	(67,282)	(33,247)	(34,035)
<u>(O) Amortization of Plant Acquisition Adjustment</u>			
21 TCWS proposes to include amortization expense of \$5,210 associated with a request for a plant acquisition adjustment. ORS does not propose an amortization adjustment since ORS proposes to remove the plant acquisition adjustment.			
Per ORS	0	0	0
Per TCWS	5,210	716	4,494
<u>(P) Amortization of Contributions in Aid of Construction (CIAC)</u>			
22 ORS and TCWS propose to annualize amortization of CIAC as of September 30, 2005. The purpose of this adjustment is to properly calculate amortization expense associated with CIAC. ORS and TCWS amortized CIAC using a 1.5% rate.			
Per ORS	42,642	10,485	32,157
Per TCWS	45,369	11,394	33,975

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>(Q) Interest During Construction (IDC)</u>			
23 TCWS and ORS propose to eliminate IDC for rate making purposes. TCWS and ORS did not include construction work in progress in rate base and therefore IDC is eliminated as an addition to net income.			
Per ORS	(80)	(20)	(60)
Per TCWS	(80)	(20)	(60)
<u>(R) Customer Growth</u>			
24 ORS proposes to adjust for customer growth after accounting and pro forma adjustments. ORS used customer units as of June 2006, since plant additions have been included to that time period. See Settlement Audit Exhibit DFS -7.			
Per ORS	1,207	147	1,060
Per TCWS	0	0	0
<u>(S) Gross Plant In Service</u>			
25 ORS and TCWS propose to adjust for pro forma plant additions and retirements. TCWS adjustment is based on estimated general ledger additions, capitalized time additions and pro forma plant additions and retirements. ORS adjustment is based on known and measurable plant in service including general ledger additions, capitalized time additions and pro forma additions and retirements as of June 2006.			
Per ORS	241,694	22,584	219,110
Per TCWS	313,409	91,084	222,325
26 ORS proposes to capitalize wages, taxes, and benefits as a result of the payroll adjustment. ORS capitalized 12.53% of the wage adjustment.			
Per ORS	662	342	320
Per TCWS	0	0	0
<u>Total Gross Plant In Service</u>	242,356	22,926	219,430

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>(T) Accumulated Depreciation</u>			
27 TCWS proposes to adjust accumulated depreciation using estimated plant additions and retirements. ORS proposes to reduce accumulated depreciation for the annualized depreciation expense adjustment of \$35,738 and actual retirements from October 2005 - June 2006 of \$18,919.			
Per ORS	54,657	5,470	49,187
Per TCWS	12,380	15,992	(3,612)
<u>(U) Cash Working Capital</u>			
28 TCWS and ORS propose to adjust cash working capital after accounting and pro forma adjustments. See Settlement Audit Exhibit DFS-8.			
Per ORS	7,422	3,774	3,648
Per TCWS	12,917	8,176	4,741
<u>(V) Contributions in Aid of Construction</u>			
29 ORS proposes to adjust contributions in aid of construction to reflect the difference in amortization using a 1.5% amortization rate versus a 2% amortization rate.			
Per ORS	(42,642)	(10,485)	(32,157)
Per TCWS	0	0	0
<u>(W) Interest Expense</u>			
30 ORS and TCWS propose to adjust interest on debt using a 59.10% / 40.90% debt / equity ratio and a 6.42% cost of debt. ORS proposes to compute allowable interest expense as adjusted present and after the proposed increase rate base. See Settlement Audit Exhibit DFS -9.			
Per ORS	9,933	823	9,110
Per TCWS	(83,468)	(34,091)	(49,377)

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
<u>(X) Operating Revenues - Proposed Increase</u>			
31 ORS and TCWS propose an increase in operating revenues.			
Per ORS	59,816	1,201	58,615
Per TCWS	197,199	52,368	144,831
<u>(Y) Uncollectible Accounts - Proposed Increase</u>			
32 ORS and TCWS propose to adjust uncollectible accounts expense for the proposed revenue using an uncollectible rate of .33% for water and sewer.			
Per ORS	(197)	(4)	(193)
Per TCWS	(657)	(173)	(484)
<u>(Z) Taxes Other Than Income - Proposed Increased</u>			
33 ORS and TCWS propose to adjust utility/commission tax (.0082524) and gross receipts taxes (.003) for the proposed revenue using a combined factor of .0112524.			
Per ORS	673	14	660
Per TCWS	2,215	588	1,627
<u>(AA) Income Taxes - State - Proposed Increase</u>			
34 TCWS records income taxes using current tax rates on calculated taxable income. ORS proposes to compute income taxes after the proposed increase.			
Per ORS	2,947	59	2,888
Per TCWS	9,716	2,580	7,136
<u>(AB) Income Taxes - Federal - Proposed Increase</u>			
35 TCWS records income taxes using current tax rates on calculated taxable income. ORS proposes to compute income taxes after the proposed increase.			
Per ORS	19,600	394	19,206
Per TCWS	64,614	17,159	47,455

Tega Cay Water Service, Inc.
Explanation of Accounting and Pro Forma Adjustments
For the Test Year Ended September 30, 2005

<u>Description</u>	<u>Combined</u>	<u>Water</u>	<u>Sewer</u>
	\$	\$	\$
(AC) Customer Growth			
36 ORS proposes to adjust customer growth for the effect of the proposed increase. ORS used customer units as of June 2006, since plant additions have been extended to that time period. See Settlement Audit Exhibit DFS -7.			
Per ORS	429	8	421
Per TCWS	0	0	0

Settlement Audit Exhibit DFS-5

Tega Cay Water Service, Inc.
Depreciation Expense Adjustment
Test Year Ended September 30, 2005

	<u>Combined</u> \$	<u>Water</u> \$	<u>Sewer</u> \$
<u>Gross Plant @ September 30, 2005</u>	12,042,383	3,003,103	9,039,280
ADD:			
Pro Forma Plant, Retirements, Capitalized Time and General Ledger Additions as of June 2006	242,356	22,926	219,430
LESS:			
Organization	(244,495)	(125,040)	(119,455)
Land	(8,989)	(1,869)	(7,120)
Vehicles	(97,606)	(50,374)	(47,232)
Wells	(352,044)	(352,044)	0
Net Plant	11,581,605	2,496,702	9,084,903
Plant Depreciation @ 1.5% (66.7 years)	173,725	37,451	136,274
Vehicles as of June 2006	97,606	50,374	47,232
Less: Fully Depreciated Vehicles	(61,529)	(31,755)	(29,774)
	36,077	18,619	17,458
Vehicle Depreciation @ 25% (4 years)	9,019	4,655	4,364
WSC Depreciation Allocation	2,792	1,441	1,351
Regional Office Depreciation Allocation	1,084	559	525
Extraordinary Retirement (Wells)	22,906	22,906	0
Total Depreciation	209,526	67,012	142,514
Less: Per Books Depreciation	245,264	64,638	180,626
ORS Adjustment	(35,738)	2,374	(38,112)
Company's Adjustment	(26,984)	8,945	(35,929)
Contributions in Aid of Construction			
CIAC @ September 30, 2005	(8,609,368)	(2,123,950)	(6,485,418)
Amortization %	1.50%	1.50%	1.50%
Amortization Amount	(129,141)	(31,859)	(97,281)
Per Book Amount	(171,782)	(42,344)	(129,438)
ORS Adjustment	42,642	10,485	32,157
Company's Adjustment	45,369	11,394	33,975

Settlement Audit Exhibit DFS-6

Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005

	As Adjusted - Per Books		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue As Adjusted	957,892	351,883	606,009
Operating Expenses As Adjusted	851,985	331,931	520,054
Net Operating Income Before Taxes	105,907	19,952	85,955
Less: Annualized Interest Expense	59,988	2,045	57,943
Taxable Income - State	45,919	17,907	28,012
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	2,296	895	1,401
Less: State Income Taxes Per Book	1,338	486	852
Adjustment to State Income Taxes	958	409	549
Taxable Income - Federal	43,623	17,012	26,611
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	15,268	5,954	9,314
Less: Federal Income Taxes Per Book	58,992	21,408	37,584
Adjustment to Federal Income Taxes	(43,724)	(15,454)	(28,270)

	As Adjusted - Present		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue As Adjusted	959,758	352,015	607,743
Operating Expenses As Adjusted	836,638	332,854	503,784
Net Operating Income Before Taxes	123,120	19,161	103,959
Less: Annualized Interest Expense	69,921	2,868	67,053
Taxable Income - State	53,199	16,293	36,906
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	2,660	815	1,845
Less: State Income Taxes As Adjusted Per Book	2,296	895	1,401
Adjustment to State Income Taxes	364	(80)	444
Taxable Income - Federal	50,539	15,478	35,061
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	17,688	5,417	12,271
Less: Federal Income Taxes As Adjusted Per Book	15,268	5,954	9,314
Adjustment to Federal Income Taxes	2,420	(537)	2,957

Settlement Audit Exhibit DFS-6

**Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005**

Settlement Audit Exhibit DFS-6

Tega Cay Water Service, Inc.
Computation of Income Taxes
For the Test Year Ended September 30, 2005

	After Proposed Increase		
	Combined Operations	Water Operations	Sewer Operations
Operating Revenue After Proposed Increase	1,019,377	353,212	666,165
Operating Expenses After Proposed Increase	837,311	332,868	504,444
Net Operating Income Before Taxes	182,066	20,344	161,721
Less: Annualized Interest Expense	69,921	2,868	67,053
Taxable Income - State	112,145	17,476	94,668
State Income Tax %	5.0%	5.0%	5.0%
State Income Taxes	5,607	874	4,733
Less: State Income Taxes As Adjusted - Present	2,660	815	1,845
Adjustment to State Income Taxes	2,947	59	2,888
Taxable Income - Federal	106,538	16,603	89,935
Federal Income Taxes %	35.0%	35.0%	35.0%
Federal Income Taxes	37,288	5,811	31,477
Less: Federal Income Taxes As Adjusted - Present	17,688	5,417	12,271
Adjustment to Federal Income Taxes	19,600	394	19,206

Settlement Audit Exhibit DFS-7

Tega Cay Water Service, Inc.
Customer Growth Computation
Test Year Ended September 30, 2005

<u>Combined Operations:</u>	(1) As Adjusted Present	(2) Effect of Proposed Increase	(3) After Increase
Description	\$	\$	\$
Water Customer Growth	147	8	156
Sewer Customer Growth	1,060	421	1,481
Combined Customer Growth	1,207	429	1,637

Number of Customer Units:

Beginning	3,407	Formula:			
Ending	3,487	Ending - Average	=	40	= 1.16%
Average	3,447	Average		3,447	

Water Operations:

Total Operating Income	12,929	731	13,660
Growth Factor	1.14%	1.14%	1.14%
Customer Growth	147	8	156

Number of Customer Units:

Beginning	1,738	Formula:			
Ending	1,778	Ending - Average	=	20	= 1.14%
Average	1,758	Average		1,758	

Sewer Operations:

Total Operating Income	89,843	35,668	125,511
Growth Factor	1.18%	1.18%	1.18%
Customer Growth	1,060	421	1,481

Number of Customer Units:

Beginning	1,669	Formula:			
Ending	1,709	Ending - Average	=	20	= 1.18%
Average	1,689	Average		1,689	

Note: Combined Customer Growth equals Water plus Sewer Customer Growth

Beginning Customer Units @ 10/2004

Ending Customer Units @ 6/2006

Settlement Audit Exhibit DFS-8

Tega Cay Water Service, Inc.
Cash Working Capital Allowance
For the Test Year Ended September 30, 2005

	Combined Operations	Water Operations	Sewer Operations
Maintenance Expenses - As Adjusted	391,466	112,943	278,523
General Expenses - As Adjusted	<u>242,546</u>	<u>124,727</u>	<u>117,819</u>
Total Expenses for Computation	634,012	237,670	396,342
Allowable Rate	<u>12.50%</u>	<u>12.50%</u>	<u>12.50%</u>
Computed Cash Working Capital - As Adjusted	79,252	29,709	49,543
Cash Working Capital - Per Books	<u>71,830</u>	<u>25,935</u>	<u>45,895</u>
Cash Working Capital Adjustment - ORS	<u>7,422</u>	<u>3,774</u>	<u>3,648</u>
Cash Working Capital Adjustment - CWS	<u>12,917</u>	<u>8,176</u>	<u>4,741</u>

Tega Cay Water Service, Inc.
Return on Common Equity
Capital Structure at September 30, 2005

Description	Capital Structure	Combined					After Proposed Increase				
		Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return	Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return
		%	\$	%	%	\$	%	\$	%	%	\$
Long-Term Debt	136,789,585	59.10%	1,089,114	6.42%	3.79%	69,922		1,089,114	6.42%	3.79%	69,922
Common Equity	94,651,855	40.90%	753,719	4.52%	1.86%	34,057		753,719	9.40%	3.85%	70,884
Totals	231,441,440	100.00%	1,842,833		5.65%	103,979		1,842,833		7.64%	140,806

Description	Capital Structure	Water					After Proposed Increase				
		Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return	Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return
		%	\$	%	%	\$	%	\$	%	%	\$
Long-Term Debt	136,789,585	59.10%	44,668	6.42%	3.79%	2,868		44,668	6.42%	3.79%	2,868
Common Equity	94,651,855	40.90%	30,912	33.02%	13.51%	10,208		30,912	35.41%	14.48%	10,947
Totals	231,441,440	100.00%	75,580		17.30%	13,076		75,580		18.27%	13,815

Description	Capital Structure	Sewer					After Proposed Increase				
		Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return	Ratio	Rate	Embedded Cost/Return	Overall Cost/Return	Income For Return
		%	\$	%	%	\$	%	\$	%	%	\$
Long-Term Debt	136,789,585	59.10%	1,044,447	6.42%	3.79%	67,053		1,044,447	6.42%	3.79%	67,053
Common Equity	94,651,855	40.90%	722,806	3.30%	1.35%	23,850		722,806	8.29%	3.39%	59,939
Totals	231,441,440	100.00%	1,767,253		5.14%	90,903		1,767,253		7.18%	126,992

Settlement Audit Exhibit DFS-9

Note: ORS used Capital Structure of Parent Company @ 9/30/2005.

Settlement Audit Exhibit DFS-10

Tega Cay Water Service, Inc.
Income Statement
Test Year Ended September 30, 2005

	Combined \$	Water \$	Sewer \$
<u>Operating Revenues</u>			
Service Revenues - Water	346,686	346,686	0
Service Revenues - Sewer	600,216	0	600,216
Miscellaneous Revenues	14,148	6,343	7,805
Uncollectible Accounts	(3,158)	(1,146)	(2,012)
<u>Total Operating Revenues</u>	<u>957,892</u>	<u>351,883</u>	<u>606,009</u>
<u>Maintenance Expenses</u>			
Salaries and Wages	113,404	58,528	54,876
Purchased Power	51,569	14,361	37,208
Purchased Sewer & Water	(1,196)	(1,196)	0
Maintenance and Repair	189,535	20,422	169,113
Maintenance Testing	10,589	1,719	8,870
Meter Reading	10,091	10,091	0
Chemicals	14,669	7,571	7,098
Transportation	11,750	6,064	5,686
Operating Exp. Charged to Plant	(17,958)	(9,268)	(8,690)
Outside Services - Other	5,799	2,993	2,806
<u>Total</u>	<u>388,252</u>	<u>111,285</u>	<u>276,967</u>
<u>General Expenses</u>			
Salaries and Wages	52,865	27,284	25,581
Office Supplies & Other Office Exp.	20,422	10,540	9,882
Regulatory Commission Exp.	0	0	0
Pension & Other Benefits	31,858	16,442	15,416
Rent	4,466	2,305	2,161
Insurance	61,148	31,558	29,590
Office Utilities	9,165	4,730	4,435
Miscellaneous	6,458	3,333	3,125
<u>Total</u>	<u>186,382</u>	<u>96,192</u>	<u>90,190</u>
Depreciation	245,264	64,638	180,626
Taxes Other Than Income	206,869	105,160	101,709
Income Taxes - Federal	58,992	21,408	37,584
Income Taxes - State	1,338	486	852
Amortization of ITC	0	0	0
Amortization of PAA	0	0	0
Amortization of CIAC	(171,782)	(42,344)	(129,438)
<u>Total</u>	<u>340,681</u>	<u>149,348</u>	<u>191,333</u>
<u>Total Operating Expenses</u>	<u>915,315</u>	<u>356,825</u>	<u>558,490</u>
<u>Net Operating Income</u>	<u>42,577</u>	<u>(4,942)</u>	<u>47,519</u>
Interest During Construction	(80)	(20)	(60)
Interest on Debt	167,102	41,993	125,109
<u>Net Income</u>	<u>(124,445)</u>	<u>(46,915)</u>	<u>(77,530)</u>

Settlement Audit Exhibit DFS-11

Tega Cay Water Service, Inc.
Balance Sheet
September 30, 2005

<u>Assets</u>			
Plant In Service			
Water	3,003,103		
Sewer	9,039,280		
Total		12,042,383	
Accumulated Depreciation - Water	(731,857)		
Accumulated Depreciation - Sewer	(2,179,368)		
Total		(2,911,225)	
Net Utility Plant			9,131,158
Plant Acquisition Adjustment - Water	39,157		
Plant Acquisition Adjustment - Sewer	245,676		
Total			284,833
Construction Work In Process - Water	0		
Construction Work In Process - Sewer	0		
Total			0
Current Assets			
Cash	0		
Accounts Receivable - Net	144,432		
Other Current Assets	276		
Total			144,708
Deferred Charges			723
	<u>Total Assets</u>		<u>9,561,422</u>
<u>Liabilities and Other Credits</u>			
Capital Stock and Retained Earnings			
Common Stock and Paid In Capital	2,606,917		
Retained Earnings	378,199		
Total			2,985,116
Current and Accrued Liabilities			
Accounts Payable - Trade	32,350		
Taxes Accrued	88,663		
Customer Deposits	58,630		
Customer Deposits - Interest	27,388		
A/P - Associated Companies	(950,188)		
Total			(743,157)
Advances In Aid of Construction			
Water	0		
Sewer	0		
Total			0
Contributions In Aid of Construction			
Water	1,686,534		
Sewer	5,128,610		
Total			6,815,144
Accumulated Deferred Income Tax			
Unamortized ITC	0		
Deferred Tax - Federal	517,970		
Deferred Tax - State	(13,653)		
Total			504,317
	<u>Total Liabilities and Other Credits</u>		<u>9,561,420</u>

BEFORE**THE PUBLIC SERVICE COMMISSION OF****SOUTH CAROLINA****DOCKET NO. 2006-97-WS**

IN RE:

Application of Tega Cay Water
Service, Inc. for adjustment of
rates and charges and modifications to
to certain terms and conditions for the
provision of water and sewer service.

**SETTLEMENT TESTIMONY
OF CONVERSE A. CHELLIS, III**

1 **Q. PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS.**

2 A. My name is Converse A. Chellis, III. I am a Certified Public Accountant ("CPA")
3 and a principal in and the Director of Litigation Services and Property Tax Services for
4 Gamble Givens & Moody, LLC, a public accounting firm with offices in Charleston, Kiawah
5 Island, and Summerville, South Carolina. My office is located at 133 East First North Street,
6 Suite 9, Summerville, South Carolina 29483.

7 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

8 A. In 1965, I graduated from The Citadel, The Military College of South Carolina with a
9 bachelor's degree in business administration. I also have completed graduate level courses in
10 accounting at the University of Georgia. In addition, I have had a minimum of forty (40)
11 hours of continuing professional education ("CPE") each year since 1969, for a total of at
12 least 1,440 total CPE hours.

13 **Q. PLEASE DESCRIBE YOUR WORK HISTORY AND PROFESSIONAL**
14 **EXPERIENCE PRIOR TO YOUR CURRENT POSITION.**

1 A. Upon graduation from The Citadel in 1966, I served in the United States Air Force
2 and was assigned to the Auditor General's staff. In 1969, I joined Touche Ross (now
3 Deloitte and Touche) and was a senior accountant. I formed Chellis and Chellis in 1972, and
4 have been a name partner and managing partner in several accounting firms until 1998. In
5 1999, I merged my firm with Gamble Givens & Moody, where I am a principal and Director
6 of Litigation Services.

7 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ASSOCIATIONS?**

8 A. Yes. I am a member of the American Institute of Certified Public Accountants
9 ("AICPA"). From 1983-1985, I served on AICPA's continuing education executive
10 committee, and in 1985 I served on the AICPA council.

11 I am also a member of the South Carolina Association of Certified Public
12 Accountants ("SCACPA"). I served as Vice-President of the SCACPA's Coastal Chapter in
13 1977-78 and as President in 1978-79. In 1985 I served as the State President of the
14 SCACPA, having previously served on the state level as Vice-President, Secretary/Treasurer,
15 and Director. I have also been Chairman of the SCACPA's Committee on Continuing
16 Professional Education, Chairman and trustee for the SCACPA's educational fund, and
17 Chairman of the SCACPA's Committee on Cooperation with Governmental Agencies.

18 From 1986-1994, I was a member of the State Board of Accountancy, where I served
19 as Secretary/Treasurer from 1988-1990 and Chairman from 1990-1993.

20 From 1982-1998, I was a member of Accounting Firms Associates, inc. I am also a
21 past member of the American Society of Appraisers, and a current member of the American
22 College of Forensic Examiners. In addition, I am a past associate in the Municipal Finance

1 Officers Association, and I have held various offices in the National Association of
2 Accountants. I am also active in the peer review process, which involves examination of the
3 work of other accountants and accounting firms to assure that quality controls are being
4 applied in conformance with the Quality Control Standards adopted by the AICPA.

5 **Q. HAVE YOU EVER GIVEN ANY PRESENTATIONS TO OTHER ACCOUNTANTS**
6 **OR AUDITORS?**

7 A. Yes. I have been a speaker and an instructor for the accounting profession on a
8 number of accounting topics, including topics related to generally accepted accounting
9 principles ("GAAP").

10 **Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT WITNESS IN A SOUTH**
11 **CAROLINA COURT?**

12 A. Yes. I have been qualified as an expert witness in both the circuit and family courts
13 of South Carolina. I have also given testimony before this Commission and other
14 administrative agencies.

15 **Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY?**

16 A. The purpose of my settlement testimony is to support the adoption of the Settlement
17 Agreement reached between Tega Cay Water Service, Inc., or "TCWS", and the South
18 Carolina Office of Regulatory Staff, or "ORS", in this case.

19 **Q. IN YOUR OPINION, IS THE SETTLEMENT AGREEMENT A REASONABLE**
20 **MEANS OF RESOLVING THE ISSUES IN THIS CASE?**

21 A. Yes, it is.

22 **Q. WHAT IS THE BASIS FOR YOUR OPINION IN THIS REGARD?**

1 A. I have several reasons for believing that the Settlement Agreement is a reasonable
2 means by which to resolve the disputed issues in this case. First, one of the statutory duties
3 of ORS is to facilitate the resolution of disputed issues involving matters within the
4 jurisdiction of the Commission. I think it incumbent upon the other parties in cases before
5 the Commission, which in this proceeding is only TCWS, to work with ORS in good faith in
6 an attempt to reach a settlement. I believe that the Settlement Agreement reflects a good
7 faith effort on the part of ORS and TCWS to meet their respective obligations in that regard.

8 Second, and as Dr. Skelton mentions in his testimony in support of the Settlement
9 Agreement, capital markets recognize the value of settlements in ratemaking cases.
10 Additional investment resulting from favorable capital markets would be an enhancement to
11 economic development in South Carolina which is consistent with the public interest.

12 Third, a settlement brings the matter to an end without delay and the uncertainty of
13 further proceedings; this in turn permits ORS to focus its talents and resources on other
14 matters within its area of responsibility and permits the Company to focus upon the
15 continued improvement and expansion of its facilities and services for the benefit of its
16 customers.

17 In summary, the comprehensive settlement proposed by the parties in my opinion
18 fairly balances the interest of the customers and the Company. I therefore respectfully urge
19 that the Commission approve the Settlement Agreement.

20 **Q. DOES THIS CONCLUDE YOUR SETTLEMENT TESTIMONY?**

21 A. Yes it does.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-97-WS

IN RE:

Application of Tega Cay Water
Service, Inc. for adjustment of
rates and charges and modifications to
certain terms and conditions for the
provision of water and sewer service.

**SETTLEMENT TESTIMONY
OF B. R. SKELTON, PhD.**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is B. R. Skelton and my business address is 2962 Walhalla Highway,
Six Mile, South Carolina 29682. I am Professor *Emeritus* of Economics at Clemson
University and am engaged in a variety of private business endeavors, including real
estate brokerage and residential construction. I also act as a mediator and arbitrator.
Since 1974, I have mediated 190+ disputes and written decisions in over 1000 arbitration
cases, mostly union-management grievances. I have also arbitrated deferrals from the
courts and the NLRB.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
PROFESSIONAL EXPERIENCE.**

A. I received my B.S. degree in Arts & Sciences (History & Economics) from
Clemson University in 1956. In 1958, I received a Masters of Science degree in
Agricultural Economics from Clemson University. I received my Ph.D. in Economics
from Duke University in 1964.

1 From 1959 to 1987, I was a professor of Economics at Clemson except for 1961-
2 63 when I was in graduate school at Duke University. In addition to teaching standard
3 economic theory, my academic background includes writing, lecturing and research in
4 the areas of labor economics, economic development and arbitration. While at Clemson,
5 I was a member of the Southern Economics Association and American Economic
6 Association. I was also a member of the Arbitration Panel of the Federal Mediation and
7 Conciliation Service and the American Arbitration Association. I retired from Clemson
8 in 1987.

9 **Q. PLEASE DESCRIBE YOUR WORK IN THE REAL ESTATE FIELD.**

10 **A.** Over time I have developed subdivisions, commercial property, apartments and
11 bought and sold real estate of all types.

12 **Q. DO YOU PROVIDE ANY CONSULTING SERVICES?**

13 **A.** I have served as a consultant to various individuals and companies, mostly
14 wrongful death and injury, divorce, product liability and valuation of business losses. I
15 was President of Economic Research and Consulting Associates prior to 1980, the
16 business that provided this analysis. I have testified before the PSC in one case involving
17 a water company in Oconee County.

18 **Q. DO YOU HOLD ANY OTHER PROFESSIONAL DESIGNATIONS?**

19 **A.** Yes. I am a mediator and arbitrator and am licensed by the State of South
20 Carolina as both a real estate broker and residential contractor. I am also an elected
21 member of the National Academy of Arbitrators and have been a member since 1981.

22 **Q. WHAT IS THE PURPOSE OF YOUR SETTLEMENT TESTIMONY?**

1 A. The purpose of my testimony is to provide support for the Settlement
2 Agreement entered into by the parties in the proceeding on August 21, 2006.
3 Specifically, I will be testifying as to the reasons why the 9.40% Return on Equity
4 ("ROE") agreed to by the parties is a reasonable ROE for the Company in the
5 context of a comprehensive settlement of this specific case and why the
6 Commission should approve the proposed settlement.

7 **Q. WHY, IN YOUR OPINION, IS THE SETTLEMENT ROE OF 9.40%**
8 **SUPPORTABLE AS A REASONABLE ROE FOR THE COMPANY IN**
9 **THE CONTEXT OF A COMPREHENSIVE SETTLEMENT**
10 **AGREEMENT?**

11 A. In the context of the present settlement agreement, which disposes of all
12 issues in the case, rates set based upon a 9.40% ROE can provide investors the
13 opportunity to earn a reasonable return on the Company's capital investment.
14 Based on my knowledge of the capital market, and my understanding of its
15 expectations related to regulated and non-regulated returns in the present
16 economic context, I believe that 9.40% is a sufficient return which the capital
17 market would expect in the context of a comprehensive settlement.

18 **Q. WHY IS A SETTLEMENT IMPORANT TO CAPITAL MARKETS?**

19 A. I believe that investors place great importance on the settlement of
20 litigation disputes involving any industry. I am aware from my experience in
21 mediating and arbitrating labor disputes that the capital markets in general react
22 favorably to the settlement of wage/benefit issues which comprise only one aspect

1 of the overall financial picture for non-regulated industries. Whether utility rate
2 cases are settled or litigated is even more important to investors in the utility
3 industry as these cases involve every aspect of the financial picture of a utility and
4 therefore figure prominently in analysts' reports and evaluations of these cases.
5 The settlement of a rate case is therefore a factor that strongly influences the
6 capital market's assessment of the regulatory climate a utility operates in. The
7 capital market sees settlements as an indication of a cooperative relationship
8 between a utility and its regulators and the other participants in the regulatory
9 process. Given this, I believe that this settlement should be approved.

10 **Q. IN YOUR OPINION, ARE THERE OTHER REASONS WHY THE**
11 **COMMISSION SHOULD APPROVE THE SETTLEMENT PROPOSED BY**
12 **THE PARTIES IN THIS CASE?**

13 A. Yes. I believe that administrative economy supports Commission approval of the
14 proposed settlement and that settlements should be favored since they reflect a
15 solution devised by the parties which is more likely to address their needs.

16 **Q. WOULD YOU ELABORATE ON THAT STATEMENT?**

17 A. Yes. The Commission has scarce resources available to be used in the discharge of
18 its duties. These are important duties which have been delegated to the
19 Commission by the legislature. Settlement of this case will permit the Commission
20 to focus its resources on other matters within its purview. Further, in my
21 experience as a mediator and arbitrator, I have come to understand that part of the
22 value of settling disputed matters is that it results in a resolution more likely to fit

1 the needs and circumstances of the parties than does an imposed resolution. I

2 believe that to be the case here.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A. Yes, it does.**

EXHIBIT " E" to Settlement Agreement
Docket No. 2006-97-WS

TEGA CAY WATER SERVICE, INC.

PROPOSED SCHEDULE OF RATES AND CHARGES

I. WATER

1. CHARGE FOR WATER DISTRIBUTION ONLY

Where water is purchased from a government body or agency or other entity for distribution by the Company, the following rates apply:

Residential

Basic Facilities Charge per single family
house, condominium, mobile home
or apartment unit:

\$7.56 per unit*

Commodity charge:

\$1.69 per 1,000
gallons or 134 cft

*Residential customers with meters of 1" or larger
will be charged commercial rate

Commercial

Basic Facilities Charge

\$7.56 per single
family equivalent
(SFE)

Commodity charge:

\$ 1.69 per 1,000
gallons or 134 cft

The Utility will also charge for the cost of water purchased from the government body or agency, or other entity. The charges imposed or charged by the government body or agency, or other entity providing the water supply will be charged to the Utility's affected customers on a pro rata basis without markup. Where the Utility is required by regulatory authority with jurisdiction over the Utility to interconnect to the water supply system of a government body or agency or other entity and tap/connection/impact fees are imposed by that

entity, such tap/connection/impact fees will also be charged to the Utility's affected customers on a pro rata basis, without markup.

Commercial customers are those not included in the residential category above and include, but are not limited to hotels, stores, restaurants, offices, industry, etc.

The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units, which is served by a master water meter or a single water connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average and the result multiplied by the number of units served by a single meter.

2. Nonrecurring Charges

Tap Fees	\$600 per SFE*
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3. Account Set-Up and Reconnection Charges

- a. Customer Account Charge - for new customers only \$30.00
- b. Reconnection Charges: In addition to any other charges that may be due, a reconnection fee of Forty dollars (\$40.00) shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-732.5. Customers who ask to be reconnected within nine months of disconnection will be charged the monthly base facility charge for the service period they were disconnected. The reconnection fee shall also be due prior to reconnection if water service has been disconnected at the request of the customer.

4. Other Services

Fire Hydrant – One Hundred (\$100.00) per hydrant per year for water service payable in advance. Any water used should be metered and the commodity charge in Section One (1) above will apply to such usage.

5. Billing Cycle / Late Payment

Recurring charges will be billed monthly in arrears. Nonrecurring charges will be billed and collected in advance of service being provided. Any balance unpaid within twenty-five (25) days of the billing date shall be assessed a late payment charge of one and one-half (1.5%) percent for each month or any party of a month that said payment remains unpaid.

6. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to connect to its water system. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to any appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule, and comply with the guidelines and standards hereof, shall not be denied service, unless water supply is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving water system. In no event will the Utility be required to construct additional water supply capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of all costs associated with adding water supply capacity to the affected water system.

7. Cross Connection Inspection Fee

Any customer installing, permitting to be installed, or maintaining any cross connection between the Utility's water system and any other non-public water system, sewer or a line from any container of liquids or other substances, must install an approved back-flow prevention device in accordance with 24A S.C. Code Ann. Regs. R.61-58.7.F.2 (Supp. 2004), as may be amended from time to time. Such a customer shall annually have such cross connection inspected by a licensed certified tester and provide to Utility a copy of a written inspection report and testing results submitted by the certified tester in accordance with 24A S.C. Code Ann. Regs. R.61—58.7.F.8.(Supp. 2004), as may be amended from time to time. Said report and results must be provided by the customer to the Utility no later than June 30th of each year. Should a customer subject to these requirements fail to timely provide such report and results, Utility may arrange for inspection and testing by a licensed certified tester and add the charges incurred by the Utility in that regard to the customer's next bill.

* A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory

Docket No. 2006-97-WS

Order No. 2006-582

October 9, 2006

Loadings for Domestic Wastewater Treatment Facilities -- 25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2005), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee.

II. SEWER

1. Monthly Charges

Residential - charge per
single-family house, condominium,
villa, mobile home or apartment unit:

\$33.02 per unit

Commercial:

\$33.02 per SFE*

Commercial customers are those not included in the residential category above and include, but are not limited to, hotels, stores, restaurants, offices, industry, etc.

The Utility will also charge for treatment services provided by the government body or agency, or other entity. The rates imposed or charged by the government body or agency, or other, entity providing treatment will be charged to the Utility's affected customers on a pro rata basis, without markup. Where the Utility is required under the terms of a 201/208 Plan, or by other regulatory authority with jurisdiction over the Utility, to interconnect to the sewage treatment system of a government body or agency or other entity and tap/connection/impact fees are imposed by that entity, such tap/connection/impact fees will be charged to the Utility's affected customers on a pro rata basis, without markup.

The Utility will, for the convenience of the owner, bill a tenant in a multi-unit building, consisting of four or more residential units, which is served by a master sewer meter or a single sewer connection. However, in such cases all arrearages must be satisfied before service will be provided to a new tenant or before interrupted service will be restored. Failure of an owner to pay for services rendered to a tenant in these circumstances may result in service interruptions.

2. Nonrecurring Charges

Tap Fees (which includes sewer
Service connection charges and
capacity charges)

\$1,200.00 per SFE*

The nonrecurring charges listed above are minimum charges and apply even if the equivalency rating of a non residential customer is less than one (1). If the equivalency rating of a non residential customer is greater than one (1), then the proper charge may be obtained by multiplying the equivalency rating by the

appropriate fee. These charges apply and are due at the time new service is applied for, or at the time connection to the sewer system is requested.

3. Notification, Account Set-Up and Reconnection Charges

a. Notification Fee

A fee of fifteen (\$15.00) dollars shall be charged each customer to whom the Utility mails the notice as required by Commission Rule R. 103-535.1 prior to service being discontinued. This fee assesses a portion of the clerical and mailing costs of such notices to the customers creating the cost.

b. Customer Account Charge - for new customers only.

A fee of twenty-five (\$25.00) dollars shall be charged as a one-time fee to defray the costs of initiating service. This charge will be waived if the customer is also a water customer.

c. Reconnection Charges: In addition to any other charges that may be due, a reconnection fee of two hundred fifty (\$250.00) dollars shall be due prior to the Utility reconnecting service which has been disconnected for any reason set forth in Commission Rule R.103-532.4.

4. Billing Cycle

Recurring charges will be billed monthly, in arrears. Nonrecurring charges will be billed and collected in advance of service being provided.

5. Extension of Utility Service Lines and Mains

The Utility shall have no obligation at its expense to extend its utility service lines or mains in order to permit any customer to discharge acceptable wastewater into one of its sewer systems. However, anyone or any entity which is willing to pay all costs associated with extending an appropriately sized and constructed main or utility service line from his/her/its premises to an appropriate connection point, to pay the appropriate fees and charges set forth in this rate schedule and to comply with the guidelines and standards hereof, shall not be denied service, unless treatment capacity is unavailable or unless the South Carolina Department of Health and Environmental Control or other government entity has restricted the Utility from adding for any reason additional customers to the serving sewer system. In no event will the Utility be required to construct additional wastewater treatment capacity to serve any customer or entity without an agreement acceptable to the Utility first having been reached for the payment of

all costs associated with adding wastewater treatment capacity to the affected sewer system.

*A Single Family Equivalent (SFE) shall be determined by using the South Carolina Department of Environmental Control Guidelines for Unit Contributory Loading for Domestic Wastewater Treatment Facilities --25 S.C. Code Ann. Regs. 61-67 Appendix A (Supp. 2005), as may be amended from time to time. Where applicable, such guidelines shall be used for determination of the appropriate monthly service and tap fee

6. Toxic and Pretreatment Effluent Guidelines

The Utility will not accept or treat any substance or material that has been defined by the United States Environmental Protection Agency ("EPA") or the South Carolina Department of Environmental Control ("DHEC") as a toxic pollutant, hazardous waste, or hazardous substance, including pollutants falling within the provisions of 40 CFR 129.4 and 401.15. Additionally, pollutants or pollutant properties subject to 40 CFR 403.5 and 403.6 are to be processed according to the pretreatment standards applicable to such pollutants or pollutant properties, and such standards constitute the Utility's minimum pretreatment standards. Any person or entity introducing any such prohibited or untreated materials into the Company's sewer system may have service interrupted without notice until such discharges cease, and shall be liable to the Utility for all damages and costs, including reasonable attorney's fees, incurred by the Utility as a result thereof.